

## **PRIVATE ENTERPRISE**

### **Title 27**

## **COMMERCE AND TRADE**

### **Chapters:**

<b>01</b>	<b>(Reserved)</b>
<b>02</b>	<b>Licenses and License Fees</b>
<b>03</b>	<b>Trademarks and Trade</b>
<b>04</b>	<b>Consumer Protection</b>
<b>05</b>	<b>Alcoholic Beverage Control</b>
<b>06</b>	<b>Weights and Measures</b>
<b>07</b>	<b>Warranties</b>
<b>08</b>	<b>Goods</b>
<b>09</b>	<b>Price Gouging</b>
<b>10</b>	<b>Customs Regulations</b>
<b>11-14</b>	<b>(Reserved)</b>
<b>15</b>	<b>Commercial Code</b>
<b>16-24</b>	<b>(Reserved)</b>
<b>25</b>	<b>Negotiable Instruments</b>
<b>26</b>	<b>Foreign Investment</b>

### **Case Notes:**

In enacting § 3 of Sherman Act, declaring contracts, combinations and conspiracies in restraint of trade or commerce in any Territory of the United States illegal, Congress intended to include all Territories to which its powers might extend, and American Samoa is thus a Territory within the meaning of such § 3. *United States v. Standard Oil Company of California*, 92 S.Ct. 661 (1972); petition for rehearing denied, 92 S.Ct. 1166 (1972).

### **Chapter 01**

### **(RESERVED)**

### **Chapter 02**

## **LICENSES AND LICENSE FEES**

### **Sections**

#### **I. Licenses Generally**

<b>27.0201</b>	<b>Purpose.</b>
<b>27.0202</b>	<b>Definitions.</b>
<b>27.0203</b>	<b>Administration.</b>
<b>27.0204</b>	<b>Duties of Treasurer.</b>
<b>27.0205</b>	<b>License applications.</b>
<b>27.0206</b>	<b>Licensing procedure.</b>
<b>27.0207</b>	<b>Licensing for nonresidents.</b>
<b>27.0208</b>	<b>Denial of a business license.</b>
<b>27.0209</b>	<b>Term of license.</b>

- 27.0210 Apportionment of fee.**
- 27.0211 Renewal of license.**
- 27.0212 License not transferable.**
- 27.0213 License required for separate location.**
- 27.0214 Classification of business.**
- 27.0215 Combination of businesses.**
- 27.0216 Exemptions.**
- 27.0217 Payment of all fees and debts prerequisite to issuance of license.**
- 27.0218 Revocation of license.**
- 27.0219 Violation-Penalty.**

## **II. Specific Businesses**

- 27.0230 Hotels.**

## **III. Business License Fees**

- 27.0240 Established.**
- 27.0241 Proration of fee-Refunds.**
- 27.0242 License Fees.**
- 27.0243 Administration of fees.**

## **I. Licenses Generally**

### **27.0201 Purpose.**

The purpose of this chapter is to provide for the licensing of businesses in the Territory of American Samoa in order that all the necessary and reasonable control and regulation thereof may be practiced by the government for the protection of the health, welfare, safety and morals of the people of American Samoa.

**History:**1975, PL 14-4 § 1.

#### **Case Notes:**

The court will not enforce claimed partnership gains derived while the parties were in violation of the American Samoa Licensing Act. A.S.C.A. §§ 27.0201 et seq. *Papali'i v. Pen*, 18 A.S.R.2d (1991).

An agreement to violate or inhibit licensing laws is clearly illegal and contrary to public policy. A.S.C.A. §§ 27.0201 et seq. *Papali'i v. Pen*, 18 A.S.R.2d (1991).

### **27.0202 Definitions.**

As used in this chapter, unless the context clearly requires a different meaning the following definitions apply:

(a) "Business" means and includes any activity or conduct (whether proprietary, partnership, corporate, or whatever form) engaged in, or caused to be engaged in, with the object of gain or economic benefit, either direct or indirect, but does not include casual sales or personal service contracts.

(b) "Commission" means the Territorial Planning Commission of American Samoa.

(c) "Endorsement" means and includes written evidence obtained by an applicant from the examining department that the applicant has fulfilled the necessary qualifications and requirements prior to the obtaining of the license. It also, when the context so requires, means and includes the evidence of endorsement appearing on the face of the license.

(d) “Engaging in or carrying on a business” means a regular employment which occupies the time, labor, or attention of the person on a continuing basis although one act may be sufficient if circumstances show a purpose to continue, and it need not be the sole or full-time employment of the person, but may be on a part-time or periodic basis.

(e) “Examining agency” means that agency of the government or department of the government which is by law, rule, or regulation given the responsibility of examining and endorsing a class of applicants for required qualifications.

(f) “License” means and includes the permission granted by the Territory of American Samoa under authority of this chapter conferring upon the licensee the right to engage in a business or practice a trade or profession which without the authorization and permission would be illegal; it also, when the context so requires, means and includes the written evidence of that permission.

(g) “License fee” means the charge or assessment levied by the law for the privilege or authority to do that which, without payment for and obtaining the privilege or authority, would be illegal under the provisions of this chapter.

(h) “Person” means and includes any individual, over 21 years of age, firm, copartnership joint venture, association, corporation, estate, trust, or other combination or group acting as a unit.

(i) “Renewal” means the continuation for the next succeeding year of the privilege to conduct the licensed business except that no license shall be renewed unless the application is made therefor within 3 months of the expiration of the last license issued.

(j) “Treasurer” means the Treasurer of American Samoa or his designated representative.

**History:** 1975, PL 14-4 § 2; amd 1978, PL 15-92 § 1.

**Amendment:** 1978 Paragraph (b): substituted “territorial planning” for “economic development”.

**Case Notes:**

Absent a requirement that all persons engaging in business have a license, only those businesses which are without a license would otherwise be illegal, either *malum in se* or *malum prohibitum*, need a license. *Government v. South Pacific Island Airways*, ASR (1976).

**27.0203 Administration.**

Administration of this chapter may be delegated by the Governor to persons or departments as necessary for effective and efficient enforcement of this chapter.

**History:** 1975, PL 14-4 § 2.

**27.0204 Duties of Treasurer.**

It is the duty of the Treasurer to perform the following functions as well as the other functions assigned by the Governor:

(1) to insure compliance with all required prerequisites, including payment of the fee by any applicant for a license, and to issue the proper license to the applicant;

(2) to keep a complete set of records of all licenses issued;

(3) to keep and maintain a sufficient supply of application forms and any rules and regulations of the Commission or Governor’s office relating to the issuance of business licenses.

**History:** 1975, PL 14-4 § 2; amd 1978, PL 15-92 § 2.

**Amendment:** 1978 Paragraph (3): deleted “economic development” prior to “Commission”.

**27.0205 License applications.**

All license applications must be submitted on forms prescribed by the Governor or

Commission and must contain the following information:

- (1) name of business;
- (2) type of business to be conducted;
- (3) type of business organization;
- (4) names, ages, and residences of principals involved in the business;
- (5) location of business;
- (6) endorsement of a licensing or examining authority having jurisdiction over the trade, business, or occupation;
- (7) proof of bank accounts or financial statements, or both, for verification of capital investments upon request by the licensing authority;
- (8) proof of issuance of stock certificates verifying ownership, if the applicant is a corporation; and
- (9) any other information required by the Governor or Commission.

**History:** 1975, PL 14-4 § 2; amd 1982, PL 17-35 § 1.

**Amendments:** 1982 Introductory paragraph and subsections (6) and (7) amended; subsections (8) and (9) added.

#### **27.0206 Licensing procedure.**

Upon receipt of a fully completed application, the Treasurer shall forward the application to the Governor for review and approval. The Governor may in his discretion forward the license application to the Commission for review and recommendation. Upon final approval by the Governor, the license application will be forwarded to the Treasurer for final disposition. Upon receipt of a properly approved license application and payment of the appropriate license fee by the applicant, the Treasurer will issue the appropriate business license.

**History:** 1975, PL 14-4 § 2.

#### **27.0207 Licensing for nonresidents.**

(a) When an application for a business license is received by the Governor from a person who is not either an “American Samoan” or a “permanent resident” as designated in 41.0502, or in the case of a corporation when the majority stock is not owned by either of such persons, the application shall be referred to the Commission.

(b) The Commission shall hold a hearing on any application received under subsection (a) on due notice to the applicant in order to consider the application in the context of the following standards:

- (1) traffic safety;
- (2) adequate parking facilities;
- (3) availability of water and sewage facilities;
- (4) effect on land resources and economic opportunities for resident Samoans;
- (5) effect on Samoan customs, culture and traditions;
- (6) conformity to the general economic plan.

(c) After due consideration of any testimony and records introduced at the hearing, in the light of the standards set forth in subsection (b), the Commission may deny the application or return it to the Governor with a favorable recommendation. The Governor shall then evaluate the application in the light of the recommendation and the other matters set forth in 27.0208 et seq.

**History:** 1975, PL 14-4 § 2; amd 1975, PL 14-14 § 1; amd 1978, PL 15-92 § 3.

**Amendment:** 1975 Subsection (c). changed cite at end.

1978 Subsection (a): deleted "economic development" prior to "Commission".

**Case Notes:**

As previously stated in the matter of business license applications it appears that it would be proper to determine the immigration status of an applicant. The wisdom of the issuance of a business license is more properly the province of the Territorial Planning Commission. *Thomas A. French V. Aviata Faalevao*. ASR (1980).

**27.0208 Denial of a business license.**

The Governor may disapprove the application of any business license if in his opinion the issuance of a license:

(1) would be contrary to the public policy of encouraging the development of business enterprises by Samoans;

(2) would be contrary to the best interest of the public;

(3) would be incompatible with the economic and social development of the plans for the Territory, considering among other things: the nature of the proposed business, proposed location, adequacy of investment nature of the buildings and equipment and sanitary conditions.

**History:** 1975, PL 14-4 § 2.

**27.0209 Term of license.**

All licenses and applicable endorsements must be issued on a calendar year basis regardless of when issued, and expire on 31 December of the year issued or renewed.

**History:** 1975, PL 14-4 § 2; amd 1981, PL 17-24 § 2.

**27.0210 Apportionment of fee.**

All original license fees shall be prorated in one-fourth of the annual fee charged for each quarter or portion of a quarter remaining in the term from the date of issuance.

**History:** 1975, PL 14-4 § 2.

**27.0211 Renewal of license.**

(a) A licensee may renew his license at the expiration thereof by payment of license fee and by filing with the renewal application an affidavit, subject to the penalties of perjury, that he has continued to comply with all of the prerequisites and qualifications provided by law and rules and regulations which were certified by the proper departments of the government in the application for his original license. The renewing licensee may not be required to obtain the approval of the government or any department or agency thereof regarding the application of the zoning law of the Territory of American Samoa to the licensee's business premises; provided, that the licensed business is located upon the identical premises upon which it was located on the date of the issuance of the previous license.

(b) A licensee who fails to renew his license on or before 31 December of each year shall be assessed a penalty of \$2 per day for which he is delinquent, which penalty shall become part of the renewal fee. Any licensee who fails to renew his license on or before 30 January shall be required to discontinue his business until he renews the license or be subject to an injunction issued by the High Court of American Samoa and to prosecution under 27.0219. Failure to renew while continuing the operation of a business constitutes a refusal of and failure to obtain a license under the provisions of this chapter.

**History:** 1975, PL 14-4 § 2; amd 1981, PL 17-24 § 1.

**27.0212 License not transferable.**

Every license issued under this chapter is personal and shall be issued to the person or persons

making the application therefor, and may not in any circumstances be transferred to any other person except upon the forfeiture of a tenancy or upon a foreclosure of a mortgage where the original contract provides that the license is a security for the obligation, in which event the Governor shall be promptly notified of any forfeiture. Any license conditioned upon the fulfillment of any qualifications or prerequisites pertaining to the premises wherein the licensee conducts his business, trade, or profession may not be transferred to another location without written application to and written approval by the Governor.

**History:** 1975, PL 14-4 § 2.

**27.0213 License required for separate location.**

When one person operates or conducts businesses in 2 or more locations in American Samoa, the person is required to obtain a license for each location.

**History:** 1975, PL 14-4 § 2.

**27.0214 Classification of business.**

If any question of the classification of any business, conduct or activity arises pertaining to the type of class of license required under this chapter, the classification shall be made by the Commission upon review of all the facts presented to it and the classification shall be final.

**History:** 1975, PL 14-4 § 2.

**27.0215 Combination of businesses.**

Any person who operates any business which consists of a combination of 2 or more of the classes provided in this chapter shall be required to take out a separate license for each classification.

**History:** 1975, PL 14-4 § 2.

**27.0216 Exemptions.**

The provision of this chapter and the license requirements under this chapter do not apply to the following activities:

- (1) any business or trade engaged in or conducted by the government or the Government of the United States or for the sole or direct benefit of or under the direct supervision of the government;
- (2) the selling or marketing by an American Samoan agricultural producer of his own farm produce in its natural state.

**History:** 1975, PL 14-4 § 2.

**27.0217 Payment of all fees and debts prerequisite to issuance of license.**

No license may be issued unless the applicant has paid all fees and debts he may owe the government. The fees or debts must be clearly related to the operation of the business. This limitation may not be used for the purpose of collecting fees or debts owed to the government for reasons other than operation of the business for which the license is to be issued.

**History:** 1975, PL 14-4 § 2; amd 2016, PL 34-15 §3.

**27.0218 Revocation of license.**

Any license issued to a person which is based on information subsequently found by the

Governor or Commission to be false, is subject to revocation after a due notice and hearing in accordance with the Administrative Procedure Act, 4.1001 et seq. The revocation is in addition to any other penalties.

**History:** 1975, PL 14-4 § 2.

#### **27.0219 Violation-Penalty.**

(a) No person may engage in business in American Samoa without a license issued under this chapter unless specifically exempted under 27.0216.

(b) Any person who is required by this chapter to obtain a license or licenses and endorsements applicable thereto and refuses or fails to obtain the license or licenses and endorsements shall be guilty of a class B misdemeanor and upon conviction shall be sentenced accordingly.

**History:** 1975, PL 14-4 § 2; amd 1976, PL 14-29 § 1; amd 1980, PL 16-90 § 35.

**Amendments:** 1976 Subsection (a): added; provisions contained in section prior to amendment designated subsection (b).

1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **II. Specific Businesses**

#### **27.0230 Hotels.**

The Governor may not approve an application for a business license to maintain and operate a hotel unless it substantially meets the standards of the hotel at Goat Island Point (currently owned by the American Samoan Development Corporation) regarding:

- (1) sanitary conditions;
- (2) room space for each guest;
- (3) architectural beauty;
- (4) public room space for guests, taking into consideration the number of guestrooms in the hotel;
- (5) interior decorations, including decoration in guestrooms;
- (6) equipment for the preservation of food;
- (7) equipment for the preparation of food;
- (8) area surrounding the hotel;
- (9) window space for guestrooms and public rooms;
- (10) electric lighting;
- (11) building materials.

**History:** 1963, PL 8-6; 1966, PL 9-49; amd 1976, PL 14-28.

**Amendment:** 1976 Opening paragraph formerly provided that standards of the Pago Pago Americana Hotel be substantially met.

## **III. Business License Fees**

#### **27.0240 Established.**

The following annual business license fees are established:

- |  |       |
|--|-------|
| (1) alcoholic beverage establishments: |       |
| (A) beer tavern                        | \$300 |
| (B) alcoholic beverage license         | \$300 |

(2) retail store, per business location	\$150
(3) wholesale store, per business location	\$150
(4) billiard and pool hall, per table	\$150
(5) public dance hall	\$150
(6) movie theater, per theater	\$300
(7) auctioneer, per auction sale	\$150
(8) beer importer	\$200
(9) beer vendor	\$200
(10) alcoholic beverage importer	\$1,500
(11) alcoholic beverage vendor	\$1,500
(12) garage and/or repair shop	\$150
(13) service station	\$150
(14) all other business, profession, agencies or activities	\$150

A business requiring multiple business licenses as a result of engaging in multiple activities subject to being charged a business license fee, shall pay an initial fee at the highest rate charged for any of the activities they undertake, and each additional business license fee shall be paid at the rate of \$100 per licensed activity.

**History:** 1963, PL 8-1; 1969, PL 11-49; amd 1984, PL 18-53 § 7; amd 2015, PL 34-6 §1.

**Amendments:** 1984 Subsection (1) changed “beer and wine” to “beer tavern”, and “general” to “alcoholic beverage license.” Subsections (10) to (12) renumbered as (12) to (14). New subsections (10) and (11) added to provide for alcoholic beverage importer and vendor.

#### **27.0241 Proration of fee-Refunds.**

When a business is first started, the fee must be prorated according to the length of time during which the business will have been in operation at the end of the calendar year, but not for a shorter period than 3 months. A discontinued business is not eligible for a refund.

**History:** 1963, PL 8-1; amd 1981, PL 17-24 § 3.

#### **27.0242 License fees.**

The following license fees are established:

- (1) fund raising, per occasion, local, \$5;
- (2) visiting of foreign entertainment groups, performing in public or in private, \$100.

**History:** 1963, PL 8-6; 1969, PL 11-49; amd 1981, PL 17-3 § 1.

#### **27.0243 Administration of fees.**

The administration and enforcement of 20.0232, 22.0208, 22.1002, 24.0701, 27.0240 and 27.0242 shall be the responsibility of the Treasurer of American Samoa. The Treasurer may delegate his responsibility under this section.

**History:** 1967, PL 10-5.



## Chapter 03

### TRADEMARKS AND TRADE NAMES

#### Sections:

- 27.0301**      **Certificate to be obtained.**
- 27.0302**      **Application for certificate-Fee.**
- 27.0303**      **Record-Issuance and effect of certificate.**
- 27.0304**      **Revocation.**
- 27.0305**      **Cancellation of certificate.**
- 27.0306**      **Appeal.**

#### **27.0301**      **Certificate to be obtained.**

Any person desiring to secure the exclusive use of any print, label or trademark intended to be attached or applied to any goods or manufactured articles or to bottles, boxes, or packages containing the goods or manufactured articles to indicate the name of the manufacturer, the contents of the packages, the quality of the goods or directions for use, or a trade name, may obtain a certificate of the registration of the print, label, trademark, or trade name in the manner provided in this chapter.

**History:** 1987, PL 20-8 § 1.

#### **27.0302**      **Application for certificate-Fee.**

Before anyone may receive a certificate of the registration of a print, label, or trademark, he shall file in the Office of the Territorial Registrar an application for the registration of such print, label, or trademark, with a declaration, certified by the applicant, or, if the application is made by a firm, corporation or partnership, by the certification of a member of the firm, an officer of the corporation, or a partner, stating that he is, or they are, the sole and original proprietor or proprietors, or the assign or assigns of such proprietor or proprietors, of this print, label or trademark, and describing the goods or manufactured articles for which the print, label or trademark is to be used, and stating the manner in which the print, label or trademark is to be used. Before anyone receives a certificate of the registration of a trade name he shall file in the Office of the Territorial Registrar an application for the registration of the trade name, with a declaration, certified, stating that he is, or they are, the sole and original proprietor or proprietors of the trade name, or the assign or assigns of the proprietor or proprietors, and setting forth the nature of the business in which the trade name is to be used. The application shall be accompanied by two exact copies of the print, label or trademark, or it shall set forth the trade name. At the time of filing each application, the applicant shall pay to the Registrar a fee of ten dollars.

**History:** 1987, PL 20-8 § 1.

#### **27.0303**      **Record-Issuance and effect of certificate.**

Upon receiving the application so accompanied and the payment of the fee, the Territorial Registrar shall cause the print, label, trademark or trade name to be recorded in a book kept for that purpose, and shall issue to the applicant or applicants a certificate of registration with the signature of the Registrar; and the certificate or registration shall secure to the applicant or applicants the exclusive use of the print, label, trademark, or trade name throughout the

Territory, for a term of ten years; provided that the print, label, trademark or trade name is continued in actual use by the applicant in the Territory.

**History:** 1987, PL 20-8 § 1.

#### **27.0304 Revocation.**

(a) If any print, label, trademark, or trade name is not used by the applicant in accordance with the declaration for any period of three hundred and sixty-five consecutive days, the certificate of registration shall be subject to revocation.

(b) Any person desiring such revocation shall file a petition in the Office of the Territorial Registrar, setting forth facts indicating such non-use for a period of three hundred and sixty-five consecutive days immediately preceding the date of the filing of his petition. The petition shall be verified upon the information and belief, or if the petition is made by a firm or corporation, by a member of the firm or an officer of the corporation. The petitioner shall cause actual notice of the proceeding to be given the registered owner by such method or manner as the Registrar may prescribe, and the registered owner shall be given the opportunity of a full hearing. If the registered owner, after due diligence, cannot be found, the Registrar may order that the petitioner give notice by publication in some newspaper suitable for the advertisement of notices of judicial proceedings for such length of time as he deems reasonable, not less than once each week in four successive weeks, the last publication to be not less than twenty-one days prior to the date set for the hearing. The giving of notice shall be deemed complete upon the last publication. The notice as published shall also contain the date which has been set for the hearing.

(c) After granting an opportunity for hearing to the petitioner and the registered owner, the Registrar shall grant or deny the petition for cancellation, as the facts shall warrant.

**History:** 1987, PL 20-8 § 1.

#### **27.0305 Cancellation of certificate.**

Any person or persons claiming to be the owner or owners of a print, label, trademark, or trade name for which a certificate of registration pursuant to this chapter has been issued to any other person or persons may file in the Office of the Registrar an application for the cancellation of the registration of such print, label, trademark, or trade name, with a declaration verified by the oath of such applicant or applicants, or if such application is made by a firm or corporation by the oath of a member of the firm or an officer of the corporation, setting forth facts in support of the ownership by such applicant or applicants of such print, label, trademark, or trade name and in support of the claim of the applicant or applicants that the certificate of registration should be canceled. The Registrar shall give notice of such application for cancellation to the person or persons to whom the certificate of registration for the print, label, trademark, or trade name has been issued and, after granting an opportunity for hearing to the applicant or applicants for such cancellation and to the person or persons to whom the certificate of registration has been issued, shall grant or deny the application for cancellation, as the facts warrant.

**History:** 1987, PL 20-8 § 1.

#### **27.0306 Appeal.**

Any person aggrieved by any action of the Registrar under this chapter in issuing a certificate of registration, or in revoking or canceling any such certificate, or in denying an application may commence proceedings to obtain judicial review in the High Court. The matter shall be reviewed by the court de novo.

**History:** 1987, PL 20-8 § 1.

## **Chapter 04**

### **CONSUMER PROTECTION**

#### **Sections:**

- 27.0401 Bureau of Consumer Protection created--Director.**
- 27.0402 Definitions.**
- 27.0403 Director--Powers and duties.**
- 27.0404 Deceptive acts and practices.**
- 27.0405 Unconscionable consumer sales practices.**
- 27.0406 Jurisdiction and service of process.**
- 27.0407 Assurance of voluntary compliance.**
- 27.0408 Penalties for unlicensed acts.**
- 27.0409 Remedies.**
- 27.0410 Private remedies.**
- 27.0411 Cumulative remedies or penalties.**
- 27.0412 Application.**
- 27.0413 Severability.**

**Reviser's comment:** Section 1 of PL 17-38 created chapter 04 in Title 27; 2018, Section 1 of PL 35-18 amended Chapter 04 in Title 27.

#### **27.0401 Bureau of Consumer Protection created-Director.**

There is created within the Department of Legal Affairs, a Bureau of Consumer Protection. The head of this Bureau is the Director, who has been admitted to practice law before the High Court. The Director is responsible to the Attorney General and shall devote his efforts to enforcing this chapter. This Act shall be construed liberally to promote the following policies:

- (1) the protection of consumers from suppliers who commit deceptive, fraudulent, and unconscionable sales practices; and
- (2) the encouragement and development of fair consumer sales practices.

**History:** 1982, PL 17-38 § 2; amd 2018, PL 35-18.

#### **27.0402 Definitions.**

As used in this Act:

(1) "Consumer transaction" means a sale, lease, assignment, award by chance, or other disposition of an item of goods, a service, or an intangible (except securities) to an individual for purposes that are primarily personal, family, or household, or that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis, or a solicitation basis, or a solicitation by a supplier with respect to any of these dispositions.

(2) "Director" means the Director of the Bureau of Consumer Protection or his designee.

(3) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(4) “Person” means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(5) “Supplier” means a seller, lessor, assignor, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

**History:** 1982, PL 17-38 § 3; amd 1985, PL 19-17 § 1; amd 2018, PL 35-18.

**Case Notes:**

Territorial government whose Consumer Protection agency brought action in a representative capacity on behalf of a named individual, and which was not named as a plaintiff in its own right, could not recover damages in the Consumer Protection action for the loss of its own property. A.S.C.A. § 27.0402. American Samoa Government ex rel. Langford v. Hawaiian Airlines, Inc., 10 A.S.R.2d 1 (1989).

**27.0403 Director--Powers and duties.**

(a) The Director shall:

- (1) coordinate the Consumer Protection activities of the Territory;
- (2) provide public education and awareness programs on consumer rights and remedies;
- (3) investigate consumer complaints filed with the Department of Legal Affairs;
- (4) prosecute criminal acts involving consumers;
- (5) initiate civil actions to protect the rights of the consuming public;
- (6) perform all other acts necessary to enforce this chapter;
- (7) file an annual report with the Legislature each December 1st outlining the Bureau’s workload, projects, and accomplishments.

(8) maintain a public file of:

(A) final judgments rendered under this Act that have been either reported officially or made available for public dissemination;

(B) final consent judgments; and

(C) to the extent the Director considers appropriate, assurance of voluntary compliance.

(b) The Director may:

(1) issue subpoenas to a person, or individual, director, officer, employee, or agent of a business organization for any relevant information to an investigation brought under this chapter including but not limited to the production of documents, testimony, and statements.

(A) If a matter that the Director subpoenas is located outside this Territory, the person subpoenaed may either make it available to the Director at a convenient location within the Territory or pay the reasonable and necessary expenses for the Director or his representative to examine the matter at the place where it is located. The Director may designate representatives, including officials of the jurisdiction in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states.

(B) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the Director may apply to the High Court for an order compelling compliance.

(C) The Director may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he is entitled by law, may not be subjected to a criminal proceeding or to a civil penalty with respect to the transaction concerning which he is required to testify or produce relevant

matter. This subsection does not apply to damages recoverable under A.S.C.A. 27.0410(b) or to civil sanctions imposed under A.S.C.A. 27.0409(a)(3).

(2) Appoint and Commission one or more investigators subject to approval by the Attorney General. Persons appointed and commissioned under this paragraph have the powers and authority of a police officer.

(3) Advise the Governor and the Legislature on Consumer Protection legislation or administrative rules.

(4) Conduct research, hold public hearings, make inquiries, and publish studies relating to consumer sales acts or practices.

(5) Adopt substantive rules that prohibit with specificity acts or practices and appropriate procedural rules.

**History:** 1982, PL 17-38 § 4; amd 2018, PL 35-18.

#### **27.0404 Deceptive acts and practices.**

(a) Any deceptive act or practice by a supplier in connection with a consumer transaction violates this Act whether it occurs before, during, or after the transaction.

(b) Without limiting the scope of subsection (a), the act or practice of a supplier in indicating any of the following is deceptive:

(1) that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits it does not have;

(2) that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

(3) using deceptive representations or designations of geographic origin in connection with goods or services;

(4) that the subject of a consumer transaction is new, or unused, if it is not, or that the subject of a consumer transaction has been used to an extent that is materially different from the fact;

(5) that the subject of a consumer transaction is available to the consumer for a reason that does not exist;

(6) that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

(7) advertising the subject of a consumer transaction with intent not to sell it as advertised;

(8) advertising the subject of a consumer transaction with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(9) passing the subject of a consumer transaction as that of another;

(10) that replacement or repair is needed, if it is not;

(11) that a specific price advantage exists, if it does not;

(12) that the supplier has a sponsorship, approval, or affiliation he does not have;

(13) that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations if the indication is false; or

(14) engaging in any act or practice which is otherwise misleading, false pretense or promise, fraudulent, misrepresentative, or otherwise deceptive to the consumer.

**History:** 1982, PL 17-38 § 5; amd 2018, PL 35-18.

**Amendments:** 1985 Subsection (a): deleted “and” from the end of subdivisions (i) through (6).

Subsection (b): deleted “and” from the end of subdivision (1).

Subsection (c): added.

**27.0405 Unconscionable consumer sales practices.**

(a) An unconscionable act or practice by a supplier in connection with a consumer transaction violates this Act whether it occurs before, during, or after the transaction.

(b) The unconscionability of an act or practice is a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

(c) In determining whether an act or practice is unconscionable, the court shall consider circumstances such as the following of which the supplier knew or had reason to know:

(1) that he took advantage of the inability of the consumer reasonably to protect his interests because of his physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factors;

(2) that when the consumer transaction was entered into the price grossly exceeded the price at which similar property or services were readily obtainable in similar transaction by like consumers;

(3) that when the consumer transaction was entered into the consumer was unable to receive a substantial benefit from the subject of the transaction;

(4) that when the consumer transaction was entered into there was no reasonable probability of payment of the obligation in full by the consumer;

(5) that the transaction he induced the consumer to enter into was excessively one-sided in favor of the supplier; or

(6) that he made a misleading statement on which the consumer was likely to rely to his detriment.

**History:** 1982, PL 17-38 § 6; amd 2018, PL 35-18.

**27.0406 Jurisdiction and service of process.**

(a) The High Court of American Samoa has jurisdiction over any supplier, whether the supplier is a resident of the Territory or not, as to any act or practice in this Territory governed by this Act or as to any claim arising from a consumer transaction subject to this Act.

(b) In addition to any other method provided by rule or statute, personal jurisdiction over a supplier may be acquired in a civil action or proceeding instituted in the High Court by the service of process as outlined in A.S.C.A. Title 43 Chapter 5.

**History:** 1984, PL 18-31 § 1; amd 2018, PL 35-18.

**27.0407 Assurance of voluntary compliance.**

(a) In lieu of instituting or continuing an investigation or civil action, the Director may accept written assurance of voluntary compliance from the persons suspected of violation. The Director may obtain the agreement of the affected consumers where possible. The fact that a person has entered into an assurance of voluntary compliance may not be considered an admission of violation, nor may the written assurance constitute prima facie evidence of a violation. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this Act.

(b) The assurance may include a stipulation for reimbursement to some or all consumers who have been damaged by an alleged unlawful act or practice, appropriate corrective actions, and payment of costs of investigation. An assurance of voluntary compliance may become public record. A consumer does not have to accept restitution under the stipulation, but his stipulated

agreement to the assurance or his acceptance and full performance of restitution bars recovery of other damages in an action on account of the same acts or practices by him against the person or persons making restitution.

(c) In addition to or in the alternative of, the Director may enter into a consent judgement, signed by the High Court, with the persons suspected of a violation. Such judgement will have the force of law as any other judgement or order signed by the High Court.

**History:** 2018, PL 35-18.

#### **27.0408 Penalties for unlicensed acts.**

(a) A person who furnishes commodities or services to consumers for which a license is required from a department or a regulatory agency or a Board or Commission, without a license, commits a civil infraction and is subject to the penalty provided in subsection (b) of this section.

(b) A person who commits a civil infraction described in subsection (a) shall be fined not less than \$500 nor more than \$2,500 for each unlawful act or practice, which fine is to be collected in a civil suit initiated by the Bureau of Consumer Protection. Said civil penalties recovered by the Bureau shall be remitted to the Department of Legal Affairs Consumer Protection Account, and shall be used for the furtherance of the Director's duties and activities under the provisions of this Act.

(c) A contract for the furnishing of commodities by unlicensed persons is void. A person may recover the price or reasonable value of commodities furnished under a void contract.

**History:** 2018, PL 35-18.

#### **27.0409 Remedies.**

(a) In addition to any other remedies allowed by law within the Territory, the Director may bring an action:

- (1) to obtain a declaratory judgment that an act or practice violates this Act; or
- (2) to enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely violate this Act;
- (3) to recover actual damages, or obtain relief under subsection (b)(1), on behalf of consumers who complained to the Director before he instituted enforcement proceedings under this Act; or
- (4) to collect civil penalties.

(b)(1) On motion of the Director and without bond in an action under this subsection, the court may make appropriate orders, including appointment of a master or receiver of sequestration of assets, to reimburse consumers found to have been damaged, or to carry out a transaction in accordance with consumers' reasonable expectations, or to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result, or to grant other appropriate relief. The court may assess the expenses of a master or receiver against a supplier.

(2) If a supplier shows by a preponderance of the evidence that a violation of this Act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this subsection (b) is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.

(3) If an act or practice that violates this Act unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall escheat to the Territory.

(4) No action may be brought by the Director under this subsection more than five (5) years after the occurrence of a violation of this Act, or more than one year after the last payment in a consumer transaction involved in a violation of this Act, whichever is later.

(c) Civil penalties may be sought:

(1) in cases where the Director believes that a supplier's violation of this Act has been done willfully, or

(2) in cases where a supplier has violated a Court injunction brought under this Act.

(3) Such civil penalties shall not be more than \$10,000 per violation. Said civil penalties recovered by the Director shall be remitted to the Department of Legal Affairs Consumer Protection Account, and shall be used for the furtherance of the Director's duties and activities under the provisions of the Act.

**History:** 2018, PL 35-18.

#### **27.0410 Private remedies.**

(a) Whether he seeks or is entitled to damages or has an adequate remedy at law, a consumer may bring an action to:

(1) obtain a declaratory judgment that an act or practice violates this Act; or

(2) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this Act.

(b) Except in a class action, a consumer who suffers loss as a result of a violation of this Act may recover actual damages or \$100, whichever is greater.

(c) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy at law, he may bring a class action for declaratory judgment, an injunction, and appropriate ancillary relief, except damages, against an act or practice that violates this Act.

(d)(1) A consumer who suffers loss as a result of a violation of this Act may bring a class action for the actual damages caused by an act or practice:

(A) specified as violating this Act in a rule adopted by the Director before the consumer transactions on which the action is based, or

(B) declared to violate this act by a final judgement of the High Court of this Territory that was either reported officially or made available for public dissemination by the Director ten (10) days before the consumer transaction on which the action is based, or

(C) with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based.

(2) If a supplier shows by a preponderance of the evidence that a violation of this Act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.

(3) If an act or practice that violates this Act unjustly enriches a supplier and the damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall escheat to the Territory.

(e) Any class action brought under this section will be subject to rules established by the High Court.

(f) Except for services performed by the Director, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:



(1) the consumer complaining of the act or practice that violates this Act has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this Act; and

(2) an action under this section has been terminated by a judgment.

(g) Except for consent judgments entered before testimony is taken, a final judgment in favor of the Bureau is admissible as prima facie evidence of the facts on which it is based in later proceedings under this section against the same person or a person in privity with him.

(h) When a judgment under this section becomes final, the prevailing party shall mail a copy to the Director for inclusion in the public file maintained under A.S.C.A. 27.0403(a)(8).

(i) An action under this section must be brought within five (5) years after occurrence of a violation of this Act, within one (1) year after the last payment in a consumer transaction involved in a violation of this Act, or within one (1) year after the termination of proceedings by the Director with respect to a violation of this Act, whichever is later. However, when a supplier sues a consumer, the consumer may assert as a counterclaim any claim under this Act arising out of the transaction on which suit is brought.

**History:** 2018, PL 35-18.

#### **27.0411 Cumulative remedies or penalties.**

Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the Territory.

**History:** 2018, PL 35-18.

#### **27.0412 Application.**

(a) This Act does not apply to:

(1) an act or practice required or specifically permitted by or under Federal law, or by or under Territorial law;

(2) a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this Act.

(b) A person alleged to have violated this Act has the burden of showing the applicability of this Section.

**History:** 2018, PL 35-18.

#### **27.0413 Severability.**

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**History:** 2018, PL 35-18.

## **ALCOHOLIC BEVERAGE CONTROL**

### **Sections:**

- 27.0501 Definitions.**
- 27.0502 Board-Established- Appointment-Terms.**
- 27.0503 Board-Powers and duties.**
- 27.0510 Prohibition of alcoholic beverage vendor's establishments at county option.**
- 27.0515 Compliance with rules and regulations.**
- 27.0516 License required-Exemption.**
- 27.0517 Application forms for license.**
- 27.0518 Approval of license.**
- 27.0525 Beer tavern license-Safety requirements.**
- 27.0526 Beer vendor's license.**
- 27.0527 Beer importer's license.**
- 27.0528 Alcoholic beverage vendor's license.**
- 27.0529 Alcoholic beverage importer's license.**
- 27.0530 Alcoholic beverage license- Safety requirements.**
- 27.0531 Restrictions on conduct of business.**
- 27.0532 Prohibited places of consumption-Persons in possession-Penalty.**
- 27.0533 Suspension and revocation of license.**
- 27.0534 Violation-Penalty.**

### **27.0501 Definitions.**

Unless the context clearly requires otherwise:

(1) "Alcoholic beverage" means beer, distilled spirit, wine, or liquor which contains eight percent or more of alcohol by weight and which is fit for beverage purposes either alone or when combined with other substances.

(2) "Alcoholic beverage importer's license" means a license to import alcoholic beverages from without the Territory into American Samoa for sale to alcoholic beverage licensees and alcoholic beverage vendors.

(3) "Alcoholic beverage license" means a license to sell all alcoholic beverages at retail by the drink on the premises under license conditions prescribed by the Board for the particular premises.

(4) "Alcoholic beverage permit" means a permit issued by the Alcoholic Beverage Control Board to purchase and have in possession alcoholic beverages.

(5) "Alcoholic beverage vendor's license" means a license to sell alcoholic beverages other than beer for consumption off the licensee's premises.

(6) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley or other grain, hops and malt in water, and having an alcoholic content of less than eight percent by weight.

(7) "Beer importer's license" means a license to import beer from without the territory into American Samoa for sale to beer taverns, beer vendors or clubs.

(8) "Beer tavern license" means a license to sell beer for consumption on the licensee's premises.

(9) "Beer vendor's license" means a license to sell beer for consumption off the licensee's premises.

(10) "Board" means the Alcoholic Beverage Control Board.

(11) "Club" means an organization which operates an establishment for objects of an athletic,

patriotic or social nature and not for pecuniary gain, having bylaws or a constitution, regularly elected officers and a bona fide membership list, the members of which pay dues at least once each year, and includes establishments operating for pecuniary gain in Board approved hotels, in port or airport terminals and in Board approved taverns. The licensee shall hire a special attendant who shall remain on the premises during hours required by regulations issued by the Alcoholic Beverage Control Board and shall maintain peace and order. Notwithstanding any other provision of this chapter, establishments holding a "club" license may sell and serve beer and alcoholic beverages at hours established by the Board.

(12) "Licensee" means a person holding a license to sell beer or alcoholic beverages or both, and includes employees of the licensee.

(13) "Package store" means the retail outlet or outlets established by the government, operating pursuant to regulations of the Alcoholic Beverage Control Board.

(14) "Person" includes an association, business trust, copartnership, corporation, estate, firm, joint venture, receiver, syndicate or any other group or combination acting together or as a unit.

(15) "Sealed container" means any container of any alcoholic beverage or beer on which the stamp has not been broken or removed, or the flanges of the cap not lifted, or the can not punctured in any manner.

(16) "Sell" includes the transferring of title to alcoholic beverages or beer from one person to another, either with or without consideration, soliciting or receiving orders for alcoholic beverages or beer, and keeping, offering or exposing alcoholic beverages or beer for sale.

**History:** 1962, PL 8-7, 1968, PL 10-43; amd 1984, PL 18-53 § 1.

**Amendments:** 1984 Subsections (a) to (m): redesignated to be (1) to (16). New subsections added, defines alcoholic beverage importers license, alcoholic beverage vendor's license and beer importers license.

#### **27.0502 Board-Established-Appointment-Terms.**

(a) There is established within the government an Alcoholic Beverage Control Board which shall consist of 7 members appointed by the Governor of American Samoa for terms of 2 years, except that the fifth, sixth and seventh initial appointees shall serve for one year only in order that thereafter there will be staggered terms.

(b) Officials of the government may be appointed to the Board.

(c) All appointees may be reappointed to the Board.

(d) Appointees may be removed from the Board by the Governor for cause, provided the majority of the Board concurs in the cause or causes offered.

(e) Appointees may not be licensees under this chapter.

**History:** 1963, PL 8-7, amd 1975, PL 14-10 § 1.

**Amendment:** 1975 Subsection (e) added.

#### **27.0503 Board-Powers and duties.**

The Board has the following duties and responsibilities:

(1) pursuant to the provisions and procedures of 4.1001 et seq.;

(A) to promulgate rules necessary for control of the importation, sale and use of beer and alcoholic beverages in American Samoa and for the administration of this chapter, including, but not limited to, rules regarding eligibility and qualifications for licensure and specifying the books and records to be kept by all licensees;

(B) to issue, renew, refuse, modify, suspend or revoke all licenses required by this chapter;

(2) to inspect the premises, books and records of any licensee at any reasonable time;

- (3) to give advice and counsel to the government,
- (4) to establish the number of alcoholic beverage vendor's licenses throughout the Territory and in no case shall any county have more than 3 and these shall be equitably distributed geographically to accommodate the population density;
- (5) to establish, at least once annually, a prescribed maximum price list for alcoholic beverages other than beer. The Board shall establish reasonable, uniform wholesale discounts for alcoholic beverage licenses purchasing in bulk volume for resale by the drink in clubs or other premises licensed as much by the Board; and
- (6) to devise a government stamp for affixing to alcoholic beverages other than beer; to prescribe the manner in which the stamp shall be affixed as a seal; and to establish the conditions under which alcoholic beverages may be imported and retained without the American Samoa alcoholic beverage stamp.

**History:** 1963, PL 8-7, 1968, PL 10-43, 1971, PL 12-17 § 1, amd 1984, PL 18-53 § 2.

**Amendments:** 1984 Subsections (4) and (5) renumbered to be (5) and (6). New subsection (4) added Boards power to establish the number of alcoholic beverage vendor's licenses.

**27.0510 Prohibition of alcoholic beverage vendor's establishments at county option.**

The county council of any county may by regulation prohibit the establishment of alcoholic beverage vendor's premises within the county. Any such regulation shall not take effect until it has been determined in writing by the Attorney General to be legally sufficient, has been approved by the Secretary of Samoan Affairs, and has been proclaimed publicly and posted in the approved full text in writing by the county chief

**History:** 1963, PL 8-7; 1968, PL 10-43; 1971, PL 12-17 § 1, amd 1984, PL 18-53 § 3.

**Amendments:** 1984 Provides that county may prohibit alcoholic beverage vendors establishment.

**27.0515 Compliance with rules and regulations.**

No person may import or manufacture any alcoholic beverages or beer of any nature, or any malt syrup or malt extract, or have in his custody or possession, sell, give, receive or exchange any kind of beer or alcoholic beverage or keep such on any vessel or aircraft within the jurisdiction of American Samoa unless he has complied with the rules of the Alcoholic Beverage Control Board.

**History:** 1963, PL 8-7.

**27.0516 License required-Exemption.**

(a) No person may import, manufacture, or sell beer or alcoholic beverages without a license, but this section does not prevent a recognized religious organization from importing into American Samoa sacramental wine for use in religious rites without a license.

(b) Beer vendor's, beer tavern, beer importer's, alcoholic beverage, alcoholic beverage importer's and alcoholic beverage vendor's licenses are valid for one location only.

**History:** 1963, PL 8-7; amd 1984, PL 18-53 § 4.

**Amendments:** 1984 Subsection (b): includes beer importer's, alcoholic beverage importer's and alcoholic beverage vendor's licenses.

**27.0517 Application forms for license.**

Application for alcoholic beverage importer's, alcoholic beverage vendor's, beer importer's,

beer vendor's, beer tavern, and alcoholic beverage licenses must be made on forms prescribed by the Alcoholic Beverage Control Board.

**History:** 1963, PL 8-7; 1968, PL 10-43, amd 1984, PL 18-53 § 5.

**Amendments:** 1984 Includes alcoholic beverage importer s, alcoholic beverage vendor's and beer importer's licenses. Changes alcoholic beverage and club licenses to be alcoholic beverage licenses.

**27.0518            Approval of license.**

(a) No license for the sale or importation of beer and alcoholic beverages may be issued by the Treasurer unless the application for such license has been approved by the Alcoholic Beverage Control Board.

(b) Before approving or disapproving of any license, the Board shall make a careful study of the character of the applicant and the building and area in which the beer or alcoholic beverage is proposed to be sold, and such other matters pertaining to the sale and importation of beer and alcoholic beverages under the license as may be reasonably required by the Board.

**History:** 1963, PL 8-7; 1968, PL 10-43.

**27.0525            Beer tavern license-Safety requirements.**

(a) A beer tavern license shall authorize the licensee to operate a beer tavern and to sell beer for consumption on the premises only.

(b) The beer tavern may serve food to customers, provide music, and permit dancing, provided that if dancing and music constitutes a nuisance in the area the Alcoholic Beverage Control Board may order its discontinuance.

(c) Every beer tavern shall be adequately equipped with fire fighting equipment and readily accessible exits, and the beer tavern licensee shall hire a special attendant who shall remain on the premises during such hours as may be ordered by the Alcoholic Beverage Control Board and maintain peace and order.

**History:** 1963, PL 8-7.

**27.0526            Beer vendor's license.**

A beer vendor's license shall authorize the licensee to sell beer for consumption off the premises, and at distances from the premises which the Board shall prescribe for each license.

**History:** 1963, PL 8-7.

**27.0527            Beer importer's license.**

(a) A beer importer's license shall authorize the licensee to import beer into American Samoa and to hold the same for sale to beer taverns, beer vending establishments or clubs.

(b) A beer importer may, in addition to the importer's license, also hold either a beer vending or beer tavern license, or all 3 types of license, in which event he may also import beer for use in his own business.

**History:** 1963, PL 8-7.

**27.0528            Alcoholic beverage vendor's license.**

An alcoholic beverage vendor's license shall authorize the licensee to sell alcoholic beverages for consumption off the premises at distances from the premises which the Board shall prescribe for each license.

**History:** 1984, PL 18-53 § 9.

**27.0529          Alcoholic beverage importer's license.**

(a) An alcoholic beverage importer's license shall authorize the licensee to import alcoholic beverages into American Samoa for sale to alcoholic beverage vendors, alcoholic beverage licensees or clubs.

(b) An alcoholic beverage importer may in addition to the importer's license, also hold either an alcoholic beverage vendor's license or an alcoholic beverage license, or all 3 types of licenses, in which event he may also import alcoholic beverages for use in his own business.

**History:** 1984, PL 18-53 § 10.

**27.0530          Alcoholic beverage license- Safety requirements.**

(a) A person holding an alcoholic beverage license shall be authorized to sell any alcoholic beverage by the drink except beer.

(b) The licensee may serve food to the customers, provide music and entertainment, and permit dancing.

(c) Each establishment which holds an alcoholic beverage license shall be adequately equipped with fire fighting equipment and readily accessible exits, and the licensee shall remain on the premises during hours required by regulation issued by the Board and shall maintain peace and order.

**History:** 1963, PL 8-7, 1968, PL 10-43.

**27.0531          Restrictions on conduct of business.**

The conduct of business authorized under this chapter by beer vendors, beer tavern licensees, alcoholic beverage vendors and alcoholic beverage licensees shall be subject to the following restrictions:

(a) No licensee may sell any alcoholic beverage to:

(1) any person under the age of 21 years,

(2) any person who is intoxicated at the time or who is known to the seller to be an habitual drunkard;

(3) any insane or feeble minded person.

(b) No licensee of any class may allow beer or an alcoholic beverage to be sold, served or consumed on the premises covered by the license at times other than in the hours permitted by his license.

(c) Beer tavern and alcoholic beverage licensees may sell or serve beer or alcoholic beverages only from 8:00 a.m. through 2:00 a.m. the following morning, Monday through Saturday inclusive, but not on Sunday, except that:

(1) duly licensed hotels and restaurants catering to tourists may sell beer or alcoholic beverages after 10:00 a.m. on Sunday and,

(2) duty free alcoholic beverage retail outlets may sell packaged alcoholic beverages Monday through Sunday.

(d) A beer vendor or an alcoholic beverage vendor may begin selling beer or alcoholic beverages at 8.00 a.m., Monday through Saturday inclusive, but may not sell any beer to any person after 10:00 p.m., Monday through Saturday inclusive. A beer vendor or alcoholic beverage vendor may not sell any beer or alcoholic beverages on Sunday.

(e) No beer tavern or alcoholic beverage licensee of any class may permit any person less than 21 years old on the premises where the business under the license is authorized unless such

person is in the company of his parent or guardian.

(f) No licensee of any class may permit any intoxicated person to enter the premises where the business under the license is authorized, or to permit a person to become intoxicated therein.

(g) Licensees are responsible for the removal of all patrons from their premises within 15 minutes after the time permitted for the sale of beer or alcoholic beverages expires.

(h) No person, either male or female, under the age of 21 years, is allowed to sell beer or alcoholic beverages or be employed within any beer tavern, alcoholic beverage licensee premises, or club.

(i) No alcoholic beverage or beer may be sold or dispensed in any public place or places open to the public during such times as the polls may be open on the day of any general or special election.

**History:** 1963, PL 8-7, 1968, PL 10-43; 1971, PL 12-2 § 1; amd 1975, PL 14-1 § 1; amd 1984, PL 18-53 § 6.

**Amendments:** 1975 Subsection (i): added 1984 Introductory paragraph to include alcoholic beverage vendors. Subsection (d): includes side by alcoholic beverage vendor. Subsection (e) includes beer tavern licensee. Subsection (h). includes alcoholic beverage license premises, or club.

### **27.0532 Prohibited places of consumption-Persons in possession-Penalty.**

(a) It is unlawful to consume beer or an alcoholic beverage, or to be in possession of an unsealed container containing beer or an alcoholic beverage, in any of the following places in American Samoa:

(1) public roads;

(2) moving vehicles;

(3) on or within fifty (50) feet of the business premises holding a store license, other than establishments holding an alcoholic beverage, club or beer tavern license;

(4) any public place in any village in American Samoa which has by village regulation prohibited the consumption of beer or alcoholic beverages or the possession of unsealed containers containing beer or alcoholic beverages;

(5) in or around public school buildings or upon school grounds, which shall include school parking lots;

(6) public bus stops and shelter areas;

(7) public sidewalks adjacent to public highways.

(b) A person under the age of twenty-one (21) years may not possess or consume beer or any other alcoholic beverage.

(c) A violation of this section shall be punishable as a class B misdemeanor.

(d) The Department of Public Safety, in conjunction with the Attorney General's Office shall adopt a pro-arrest, pro-prosecution policy for persons who violate this section, and shall cooperate with the Alcohol Beverage Control Board to enforce and prosecute violations of all other provisions of this chapter.

**History:** 1963, PL 8-7, 1968, PL 10-43, 2008, PL 30-16.

### **27.0533 Suspension and revocation of license.**

In addition to the penalties prescribed in 27.0532, any licensee who is found in violation of the terms of his license shall have his license suspended for 30 days for a first offense, and 60 days for a second offense. His license shall be revoked on conviction of a third violation.

**History:** 1963, PL 8-7, 1968, PL 10-43.

### **27.0534 Violation-Penalty.**

Any person who violates any provision of this chapter, for the violation of which another

penalty is not specified, or who violates any lawful order of the Alcoholic Beverage Control Board, shall be sentenced as for a class B misdemeanor.

**History:** 1963, PL 8-7, 1968, PL 10-43; amd 1980, PL 16-90 § 15.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **Chapter 06**

### **WEIGHTS AND MEASURES**

#### **Sections:**

- 27.0601 Definitions.**
- 27.0602 Systems of weights and measures-Generally.**
- 27.0603 Physical standards.**
- 27.0604 Technical requirements for commercial device.**
- 27.0605 Director-Powers and duties.**
- 27.0606 Inspections and seizures.**
- 27.0607 Misrepresentation of quantity prohibited.**
- 27.0608 Misrepresentation of pricing prohibited.**
- 27.0609 Measurement of commodities.**
- 27.0610 Bulk sales.**
- 27.0611 Labelling-Generally.**
- 27.0612 Labelling-Unit pricing.**
- 27.0613 Labelling-Declaration of quantity.**
- 27.0614 Prohibitions-Penalty.**
- 27.0615 Presumptive evidence.**
- 27.0616 Injunctions.**

#### **27.0601 Definitions.**

As used in this chapter:

- (a) "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter.
- (b) "Director" means the Director of the Consumer Protection Bureau or his designated representative.
- (c) "Package" means any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale.
- (d) "Person" means both plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies, and associations.
- (e) "Primary standards" means the physical standards of the Territory which serve as the legal reference from which all other standards and weights and measures are derived.
- (f) "Sale from bulk" means the sale of commodities when the quality is determined at the time of sale.
- (g) "Samoan" or "Samoan descent" includes American Samoans of at least one-half Samoan blood and persons born on other islands of the Pacific Ocean who are of at least one-half Polynesian, Melanesian or Micronesian blood and reside in American Samoa.
- (h) "Secondary standards" means the physical standards which are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and used in the enforcement of weights and measures laws and regulations.



- (i) “Weight” as used in connection with any commodity means net weight.
- (j) “Weights or measures” means all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices.

**History:** 1962, PL 7-23; 1968, PL 10-66; 1973, PL 13-16 § 1; amd 1985, PL 19-17 § 2.

**Amendments:** 1985 Subsection (b): deleted “Department of Administrative Services” and added “Consumer Protection Bureau”.

#### **27.0602 Systems of weights and measures-Generally.**

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems must be used for all commercial purposes in the Territory. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Bureau of Standards are recognized and shall govern weighing and measuring equipment and transactions in the Territory.

**History:** 1973, PL 13-16 § 1.

#### **27.0603 Physical standards.**

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the National Bureau of Standards, shall be the Territory primary standards of weights and measures, and shall be maintained in such calibration as prescribed by the National Bureau of Standards. All secondary standards may be prescribed by the Director.

**History:** 1973, PL 13-16 § 1.

#### **27.0604 Technical requirements for commercial device.**

The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices as adopted by the National Bureau of Standards Handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices”, and supplements thereto or revisions thereof, shall apply to commercial weighing and measuring devices in the Territory, except insofar as modified or rejected by regulation of the Director.

**History:** 1973, PL 13-16 § 1.

#### **27.0605 Director-Powers and duties.**

The Director may:

- (1) maintain traceability of the Territory standards to the National Bureau of Standards;
- (2) enforce the provisions of this chapter;
- (3) issue reasonable regulations for the enforcement of this chapter, which regulations shall have the force and effect of law;
- (4) establish standards of weight, measure, or count, reasonable standards of fill, and standards for presentation of cost per unit information for any packaged commodity;
- (5) grant any exemptions from the provision of this chapter or any regulations promulgated pursuant thereto, when appropriate to the maintenance of good commercial practices and existing local customs within the Territory;
- (6) conduct investigations to ensure compliance with this chapter;

(7) delegate to appropriate personnel any of these responsibilities for proper administration of his office;

(8) inspect and test weights and measures kept, offered, or exposed for sale;

(9) inspect and test to ascertain if they are correct, weights and measures commercially used:

(A) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count; or

(B) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count;

(10) test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the Legislature of the Territory;

(11) approve for use, and mark, such weights and measures as he finds to be correct, and reject and mark as rejected such weights and measures as he finds to be incorrect; weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized; the Director shall condemn and may seize weights and measures found to be incorrect that are not capable of being made correct;

(12) weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with this chapter or regulations promulgated pursuant thereto; in carrying out the provisions of this section, the Director shall employ recognized sampling procedures such as designated by the National Bureau of Standards or other recognized system;

(13) prescribe, by regulation the appropriate term or unit of weight or measure to be used, whenever he determines in the case of a specific commodity that an existing practice of declaring those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(14) allow reasonable variations from the stated quantity of contents, which shall include the quantity by weight, measure, numerical count, or combination thereof, does not facilitate value comparison by consumers, or offers an opportunity for consumer confusion;

(15) establish fees for inspection of weights and measures.

**History:** 1973, PL 13-16 § 1.

## **27.0606            Inspections and seizures.**

(a) When necessary for the enforcement of this chapter or regulations promulgated pursuant thereto, the Director may:

(1) enter any commercial premises during normal business hours, except that in the event the premises are not open to the public, he shall first present his credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained;

(2) issue stop-use, hold, and removal orders with respect to any weights and measures commercially used, and stop-sale, hold, and removal orders with respect to any packaged commodities or bulk commodities kept, offered, or exposed for sale;

(3) seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in violation of the provisions of this chapter or regulations promulgated pursuant thereto.

(b) With respect to the enforcement of this chapter, the Director has special police powers, and may arrest, without formal warrant, any violator of this chapter.

**History:** 1973, PL 13-16 § 1.

**27.0607 Misrepresentation of quantity prohibited.**

No person may sell, offer, or expose for sale less than the quantity he represents, or take any more than the quantity he represents when, as buyer, he furnished the weight or measure by means of which the quantity is determined.

**History:** 1973, PL 13-16 § 1.

**27.0608 Misrepresentation of pricing prohibited.**

No person may misrepresent the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.

**History:** 1973, PL 13-16 § 1.

**27.0609 Measurement of commodities.**

Except as otherwise provided by the Director, commodities in liquid form must be sold by liquid measure or by weight, and commodities not in liquid form may be sold only by weight, or by measure, or by count, so long as the method of sale provides accurate quantity information.

**History:** 1973, PL 13-16 § 1.

**27.0610 Bulk sales.**

Whenever the quantity is determined by the seller, bulk sales in excess of \$20 and all bulk deliveries of fuel shall be accompanied by a delivery ticket containing the following information:

- (1) the name and address of the vendor and purchaser;
- (2) the date delivered;
- (3) the quantity delivered and the quantity upon which the price is based if this differs from the delivered quantity;
- (4) the identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale;
- (5) the count of individually wrapped packages if more than one.

**History:** 1973, PL 13-16 § 1.

**27.0611 Labelling-Generally.**

Except as otherwise provided in this chapter or by regulations promulgated pursuant thereto, any package kept for the purpose of sale or offered or exposed for sale must bear on the outside of the package a definite, plain and conspicuous declaration in English or Samoan of:

- (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container;
- (2) the quantity of contents in terms of weight, measure, or count;
- (3) the name and place of business of the manufacturer, packer, or distributor, in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed.

**History:** 1973, PL 13-16 § 1; amd 1987, PL 20-31 § 1.

**Amendments:** 1987 Added “in English or Samoan” at the end of the paragraph.

**27.0612 Labelling-Unit pricing.**

In addition to the declarations required by 27.0611, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package must bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

**History:** 1973, PL 13-16 § 1.

**27.0613 Labelling-Declaration of quantity.**

Whenever a packaged commodity is advertised in any manner with the retail price stated, there must be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or regulation to appear on the package. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the small unit of weight or measure need appear in the advertisement.

**History:** 1973, PL 13-16 § 1.

**27.0614 Prohibitions-Penalty.**

- (a) No person may:
  - (1) use or have in possession for use in commerce any incorrect weight or measure;
  - (2) remove any tag, seal, or mark from any weight or measure without specific written authorization from the proper authority;
  - (3) hinder or obstruct any weights and measures official in the performance of his duties.
- (b) Any person who violates the provisions of subsection (a) or any provision of this chapter or regulations promulgated pursuant thereto, for which a specific penalty has not been prescribed, is guilty of a misdemeanor, and upon a first conviction thereof shall be punished by a fine of not less than \$50 or more than \$500, or by imprisonment for not more than 3 months, or both. Upon a subsequent conviction thereof, he shall be punished by a fine of not less than \$100 or more than \$1,000, or by imprisonment for up to one year, or both.

**History:** 1973, PL 13-16 § 1.

**27.0615 Presumptive evidence.**

Whenever there exists a weight or measure or weighing or measuring device in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that such weight or measure or weighing or measuring device is regularly used for the business purposes of that place.

**History:** 1973, PL 13-16 § 1.

**27.0616 Injunctions.**

The Director may apply to the High Court of American Samoa for a temporary or permanent injunction restraining any person from violating any provision of this chapter.

**History:** 1973, PL 13-16 § 1.

## **WARRANTIES**

### **Sections:**

- 27.0701 Warranties of merchantability and fitness for a particular purpose.**
- 27.0702 Recovery by merchant against manufacturer.**
- 27.0703 Statement of applicable warranties-Penalty.**
- 27.0704 Consumer remedies.**

### **27.0701 Warranties of merchantability and fitness for a particular purpose.**

(a) Notwithstanding any other provision of law to the contrary, with respect to any goods or services which are the subject of or are intended to become the subject of a consumer transaction, and which are purchased primarily for personal, family, or household use and not for commercial or business use, no merchant shall orally or by written language:

(1) exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied. Any such exclusions, modifications or attempted limitations shall be void.

(b) Notwithstanding any language in subsection (a), any merchant may offer warranty coverage greater than the warranty provided by law or the manufacturer, or, offer original warranty coverage where none is provided by the manufacturer.

**History:** 1985, PL 19-9 § 1.

### **27.0702 Recovery by merchant against manufacturer.**

A merchant may recover from the manufacturer any damages resulting from a breach of the implied warranties of merchantability or fitness for a particular purpose.

**History:** 1985, PL 19-9 § 1.

### **27.0703 Statement of applicable warranties-Penalty.**

(a) Automobile dealers and retailers of major appliances worth over \$150 at the time of sale must inform the consumer purchaser at the time of sale whether any warranties apply to the automobile or major appliance. If any warranty applies to such automobile or major appliance, the automobile dealer or retailer of major appliances must supply such warranty in writing to the consumer purchaser at the time of sale. If no warranty is applicable then that fact must be conspicuously displayed on the sales invoice.

(b) Any allowable conditions imposed upon a consumer purchaser in order to make a claim under an applicable warranty must be stated in a conspicuous manner on the same form on which the warranty is provided.

(c) The Director of the Bureau of Consumer Protection shall enforce this law in any court of appropriate jurisdiction by seeking civil penalties or injunctive relief and any additional relief for the complainant under chapter 04, Title 27.

(d) Civil penalties for violation of this section shall as follows:

(1) first offense, \$50:

(2) second offense, \$100;

(3) third or more offenses, not less than \$350 nor more than \$500 for each offense.

**History:** 1985, PL 19-28 § 1.

**27.0704 Consumer remedies.**

(a) No automobile dealer or retailer of major appliances covered under this chapter may refuse to accept the return of either defective goods or specially ordered goods which do not conform to the special order when such goods are covered by any warranty. An automobile dealer or retailer of major appliances may choose to repair or replace the goods free of costs for labor and material in lieu of refunding cash to the consumer purchaser, but only if such repairs or replacement can be achieved in a reasonably short period of time.

(b) If replacement or repair cannot be achieved in a reasonably short period of time then the consumer purchaser shall be entitled to a cash refund. In the case of defective goods, the cash refund shall equal the value the goods would have had at the time of the return if such goods had no such defect. In the case of specially ordered goods which do not conform to the special order, the cash refund shall equal the price, including freight, insurance and duties, paid by the consumer purchaser.

**History:** 1985, PL 19-28 § 1.

**Chapter 08****GOODS****Sections:**

**27.0801 Parts supply required.**

**27.0820 Repealed.**

**27.0801 Parts supply required.**

(a) Retail home entertainment dealers shall maintain an adequate service department to service the products they sell as well as an adequate supply of parts.

(b) For purposes of this section, “retail home entertainment dealer” means a person, firm, corporation, or copartnership engaged in selling radios, TVs, phonograph stereo combinations, pianos, organs, brass band instruments, stringed instruments, or any musical instrument.

(c) For purposes of this section, “adequate” means that level of service capability and parts supply that will reasonably service the consumers and customers of that dealer.

**History:** 1977, PL 15-59.

**27.0820 Kegs of beef.**

Repealed by PL 16-82 § 1.

**Chapter 09****PRICE GOUGING****Sections:**

**27.0901 Purpose.**

**27.0902 Definitions.**

**27.0903 Prohibited unfair pricing practices.**

**27.0904 Penalties and remedies.**

**27.0905 Enforcement.**

**27.0901 Purpose**

It is the public policy of this Territory to protect its citizens from price gouging during states of disaster. The Territory also realizes the complexity in regulating prices while not defeating the ability of the market in goods and services from bringing supply back in balance with demand and not defeating the function of price in allocating scarce resources.

**History:** 2006, PL 29-22.

#### **27.0902 Definitions.**

(a) “State of emergency” means a natural or manmade disaster or emergency resulting from an earthquake, hurricane, flood, riot, fire, storm, tsunami, or civil disturbance as declared by the President of the United States or the Governor of American Samoa.

(b) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(c) “Repair or reconstruction services” means services performed by any person for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

(d) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

(e) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(f) “Building materials” means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(g) “Gasoline” means any fuel used to power a motor vehicle or power tool.

(h) “Housing” means any rental housing or dwelling units leased on a month-to-month term.

(i) “Gross disparity” means a significant difference in price currently charged prior to the declaration of state of emergency and the price being charged during the declaration period.

(j) “Unconscionable prices” means an increase in the price of commodities which is greater in amount when compared to the most recent consumer price index prepared by the American Samoa Government, Department of Commerce.

(k) “Competent authority” means the Governor of American Samoa, the President of the United States, or other individual otherwise by the law with the power to declare a state of emergency.

**History:** 2006, PL 29-22.

#### **27.0903 Prohibited unfair pricing practices.**

(a) Upon a declaration of a state of emergency, and for a period of thirty (30) days following that declaration, it is unlawful for any person, contractor, business, or other entity to sell, rent or offer to sell or rent any consumer food items or goods, emergency supplies, medical supplies, building materials, housing, gasoline, or any other goods or services necessary in an emergency response for a price of more than ten percent (10%) above the price charged by that person, contractor, business or other entity for those goods or services immediately prior to the declaration of a state of emergency. However, a greater price increase shall not be unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the

services, provided that in those situations where the increase in price is attributable to additional costs imposed by the supplier or additional costs of providing the goods or services during the state of emergency, the price represents no more than ten percent (10%) above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency.

(b) Prior to the occurrence and upon a declaration of a state of emergency, and for a period of one hundred eighty (180) days following that declaration, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell any repair or reconstruction services or any other services used in emergency cleanup for a price of more than ten percent (10%) above the price charged by that person, contractor, business or other entity for those goods or services immediately prior to the declaration of a state of emergency. However, a greater price increase shall not be unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to additional costs imposed by the supplier or additional costs of providing the good or service during the state of emergency, the price represents no more than ten percent (10%) above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency.

(c) the amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit was rented, leased, sold or offered for rent or sale in the usual course of business during this period immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit, or national or international market trends.

(d) The provisions of this section may be extended for additional thirty (30) day periods by the Governor of American Samoa if deemed necessary to protect the lives, property, or welfare of the citizens.

(e) Any business offering an item for sale at a reduced price immediately prior to the declaration of a state of emergency may use the price at which they usually sell the item to calculate the price pursuant to subsection (a) or (b).

**History:** 2006, PL 29-22.

#### **27.0904 Penalties and remedies.**

(a) In addition to all other remedies provided by the American Samoa Code Annotated, the Court shall impose a civil penalty of not more than \$1,000 per violation with an aggregate total not to exceed \$25,000 for any 24-hour period against any person, contractor, business or other entity who violates the provisions of this chapter. An additional suspension of license after the second offense shall be imposed. All penalties assessed and collected shall be transferred to the Bureau of Consumer Protection of the Department of Legal Affairs to further consumer protection efforts.

(b) Any person who is found to have violated this chapter shall be guilty of a Class A misdemeanor for each violation.



(c) The remedies and penalties provided by this section are cumulative to each other and the remedies and penalties available under all other laws of American Samoa.

(d) It is a violation of this chapter if a person offers for sale or rent any commodity at an unconscionable price during this period immediately preceding and during the effectiveness of a declaration of a state of emergency declared by a competent authority.

(e) Nothing in this chapter creates a private cause of action in favor of any person damaged by a violation of this chapter.

**History:** 2006, PL 29-22.

#### **27.0905 Enforcement.**

Any violation of this chapter may be enforced by the Office of the Attorney General.

**History:** 2006, PL 29-22.

## **Chapter 10**

### **CUSTOMS REGULATIONS**

#### **Sections:**

- 27.1001 Definitions.**
- 27.1002 Security at ports and airports.**
- 27.1003 Inspection of persons and incoming merchandise and baggage.**
- 27.1004 Spectators.**
- 27.1005 Customs entry and declaration.**
- 27.1006 Landing certificate.**
- 27.1007 Production of documents by entering or leaving vessels.**
- 27.1008 Exemptions from certificate and production of documents requirements.**
- 27.1009 Boarding and searching vessels.**
- 27.1010 Production of false papers-Fine.**
- 27.1011 Tampering prohibited.**
- 27.1012 Breach of law on Boarded vessel-Seizures and arrests.**
- 27.1013 Landing and reloading of vessels in distress.**
- 27.1014 Custody of imports.**
- 27.1015 Vessel to vessel transfer.**
- 27.1016 Right of possession of consigned merchandise.**
- 27.1017 Furnishing of invoices to Treasurer.**
- 27.1018 Customs officers service fees.**
- 27.1019 Release of imports.**
- 27.1020 Unclaimed baggage.**
- 27.1021 Unclaimed merchandise-Sale or destruction-Redemption.**
- 27.1022 Proceeds of sale-Deposit into Treasury.**
- 27.1023 Exoneration of master of vessel in which merchandise was imported.**
- 27.1024 Explosives and gasoline.**
- 27.1025 Liability for duties a personal debt and lien.**
- 27.1026 Priorities in event of insolvency or bankruptcy of importer.**
- 27.1027 Contest of valuation-Reappraisal-Adjustments.**
- 27.1028 Refund of duties or excise taxes.**

- 27.1029 Seized property-Liability.**
- 27.1030 Losses caused by acts of God.**
- 27.1031 Return of duty on released merchandise prohibited.**
- 27.1032 Immunity of customs officers.**
- 27.1033 Importation of contraband, undeclared merchandise or false declaration—  
Penalties.**
- 27.1034 Exportation of contraband.**
- 27.1035 Interference with customs officer’s duties.**
- 27.1036 Oaths.**
- 27.1037 Conflict of interests.**
- 27.1038 Authority to prescribe rules and forms.**
- 27.1039 Use of U.S.C. and C.F.R. as a guide.**
- 27.1040 Violation-Penalty.**
- 27.1041 Enforcement.**
- 27.1042 Due process following seizure.**
- 27.1043 Discovery of non-payment of excise tax.**
- 27.1044 Purchase and sale of merchandise from the Post Exchange (PX).**
- 27.1045 Collection of unpaid excise tax.**

**27.1001 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

(a) “Agent” means the duly authorized representative of the owners of a vessel, aircraft or merchandise.

(b) “Aircraft” means every description of craft or other contrivance used or capable of being used as a means of transportation by air.

(c) “Baggage” means all trunks, boxes, suitcases, parcels or other luggage not included in the manifest of the ship or aircraft.

(d) “Captain”, “commander” or “pilot” of an aircraft means that person serving on the aircraft who has charge or command of its operation or navigation.

(e) “Captain” or “master” of a ship means the person in command of a ship for the time being, but does not include a harbor pilot.

(f) “Carrier”, unless the context requires otherwise, means any description of craft or other contrivance used or capable of being used as a means of transportation on the water or in the air, including pleasure vessels, vessels and non-vessels operating common carriers, and private aircraft.

(g) “Commercial vessel” means a vessel engaged in the transportation of passengers or property in commerce from port to port between one state, territory, district or possession of the United States, or foreign country and any other state, territory, district or possession of the United States, or between places in American Samoa.

(h) “Consignee” means the person to whom goods or merchandise are shipped for first sale, use, manufacture, lease or rental, or whose name appears on the bill of lading.

(i) “Customs jurisdiction” means all compounds of all official ports of entry listed in subsection (o) of this section under the jurisdiction of Customs Division for clearance purposes in international travel. Customs jurisdiction shall extend to all U.S. Post Offices located within the Territory.

(j) “Customs officers” means any customs supervisor, customs inspector, customs canine officer, customs enforcement officer, customs lieutenant, customs captain,

customs major, and any person authorized to perform the duties of a customs officer, including persons employed by another government agency. When performing their duties, customs officers shall be considered public officials/servants.

(k) “Entry” has two meanings: first, compliance with the legal requirements for the entering of a ship into the harbor; and second, the filing of documents and completion of transactions necessary to secure the release of merchandise from customs control.

(l) “Foreign” means any place beyond the limits of American Samoa.

(m) “Manifest” means a summary list of passengers and/or cargo on board a carrier, unless the context requires otherwise.

(n) “Merchandise” means goods, wares, and chattels of every description, and includes merchandise the importation of which is prohibited.

(o) “Official customs port of entry” means the following ports, where all vessels and aircraft on international travel and authorized entry into the Territory, must enter to obtain customs clearance:

(1) Pago Pago harbor;

(2) Pago Pago International Airport.

(p) “Owner” includes the person or persons legally having possession of a vessel, aircraft or merchandise, or his or their agents, and includes partnerships, associations and corporations.

(q) “Passenger” means any person carried on a vessel or aircraft who is not connected with the vessel or aircraft, or its navigation, ownership, or business, and whose name appears on the passenger list.

(r) “Port Director” means the Director of Port Administration.

(s) “Strip search” means a search in which some or all of the clothing of the person being searched is removed and subject to inspection for contraband and in which the partially or fully unclothed body of the person being searched is subjected to inspection for contraband. A custom officer performing such a search may, with due regard for the dignity and privacy of the person being searched, view the armpits, under the breasts, frontal groin area, the area between the buttock, and the interior of the mouth, but only medical personnel may search the anus or vagina of the person, where an anal or vaginal search yields contraband, the cost of such search shall be borne by the person fully searched; otherwise the cost shall be borne by the custom division.

(t) “Treasurer” means the treasurer of the American Samoa Government.

(u) “Vessel” means aircraft and every type of watercraft or other contrivance used or capable of being used as a means of transportation on water.

**History:** 1963, PL8-1, and 1987, PL 20-29 § 6; 2008, PL 30-36.

**Amendments:** 1987 replaced “the following words have the following meanings” In introductory paragraph with “unless the context clearly requires otherwise”.

Subsection (Q): added.

Subsection (I): relettered to (g).

Subsection (g): relettered to (h); added “completion of” before “transactions”.

Subsections (h) through (I): relettered to (i) through (in).

Subsection (in): relettered to (n); added “aircraft and” after “means”.

## **27.1002 Security at ports and airports.**

(a) The Treasurer is responsible for establishing controls and maintaining security over merchandise warehouses at ports and airports.

(b) Except as provided in subsection (a), the Port Director is responsible for

maintaining security for entry to, exit from and within, ports and airports.

**History:** 1987, PL 20-29 § 20; 2008, PL 30-36.

**27.1003 Inspection of persons and incoming merchandise and baggage.**

(a) All persons entering or leaving American Samoa may be searched by a customs officer. All merchandise and baggage imported or brought into American Samoa from any foreign country shall be unladed in the presence of, and inspected by, a customs officer, and that officer may require the owner or his agent or other person having charge or possession of any trunk, traveling bag, sack, valise or other container, or any closed vehicle, to open it for inspection.

(b) The customs officer may inspect without warrant any person departing or arriving on any island in the Territory to determine whether such person is violating the laws and regulations pertaining to entry into American Samoa of individuals, vessels and goods. A strip search may be performed if there is real or reasonable suspicion supported by the objective and articulable facts that the passenger is concealing evidence of a crime or contraband upon his or her person.

(c) Whenever a vessel, aircraft or any other form of transportation from a foreign port or place, or from a port or place within the Territory, arrives or exits an American Samoa port of entry, the appropriate customs and border security officer is authorized to enforce, inspect, search, and ensure compliance with all customs regulation including collection of appropriate excise taxes. This includes the search of the persons, baggage, and merchandise discharged or un-laden from such vessel, whether or not any or all such persons, baggage, or merchandise has previously been inspected, examined, or searched by customs officers.

(d) Security area:

(1) Any person who voluntarily enters a security area at the airport or seaport is subject to customs inspection as provided for in this section.

(2) Prospective passengers who enter a security area at the airport or seaport and later decide not to travel are required to return through customs inspection and clearance in the same manner as an arriving passenger on international travel.

(e) Without a search warrant but upon reasonable cause to suspect that the mail contains dutiable or prohibited items, designated customs officers of American Samoa may open or inspect the contents of mail in the customs inspection of mail which has originated outside the customs territory of American Samoa and is addressed for delivery inside American Samoa.

(f) The inspections may be conducted only in accordance with applicable federal statutes and regulations.

(g) Unless any of the following actions are authorized by a search warrant issued under Rule 41 of the High Court Rules of Criminal Procedure, customs personnel shall not read, allow any other person to read, divulge, or transfer to any other person any correspondence contained in sealed mail; or divulge, read, allow any other person to read, or listen to any paper or recording which is correspondence for the blind contained in unsealed mail; or divulge, read, allow any other person to read, or transfer to any other person correspondence of school children in unsealed mail.

(h) Customs personnel shall not, without a search warrant, open, inspect, read, or seize mail which has diplomatic or consular immunity from customs inspection according

to federal law and regulations.

(i) To execute the customs responsibilities that include searching for contraband, weapons and other illegal or undeclared merchandise, custom and border security officers may employ the use of scanners or x-ray equipment for inspecting all containers, loose cargo and merchandise, and parcels. The importer, exporter, and/or owner of the examined merchandise is responsible for the cost of this inspection, examination and search. The cost shall be paid upon completion of the scanning.

**History:** 1963, PL 8-1; 1979, amd PL 16-19 § 1; amd 1987, PL 20-29 § 7; 2008, PL 30-36; amd 2016, PL 34-19 § 1.

Amendments: 1979 Added subsections (b) — (e); existing section designated subsection (a).

1987 Added persons and” before “incoming” In section title. Subsection (a): added new first sentence to permit search of persons.

Subsection (d): moved search warrant provision to beginning; deleted “nor may custom personnel”; added “or divulge, read”; deleted “permitted transmission” after “school children”.

#### **27.1004 Spectators.**

Only individuals directly associated with the enforcement of the laws of the Territory, applicable laws of the U.S. Federal Government, which are administered at the ports of entry in the Territory, individuals who provide maintenance and service to a carrier, and arriving passengers or arriving crew members shall be permitted entry into any area between the carrier and the customs inspection area including all ramps, aprons, gangplanks, stairways, walkways, and all passageways and lavatories accessible and used by the operator of a carrier for transporting cargo from the carrier to the operator’s warehouse or storage facility. Unauthorized individuals or persons without valid, official access badges, found in any of these areas shall be deemed to be in violation of these regulations and subject to civil and criminal penalties as set forth in this chapter.

**History:** 2008, PL 30-36.

#### **27.1005 Customs entry and declaration.**

(a) All passengers and crew members regardless of citizenship must make a customs entry and declaration upon arrival in American Samoa. All articles and merchandise acquired abroad and their value (price actually paid for, or, if not purchased, fair retail value in the Territory) must be declared in writing. Written declarations must be signed and presented to the customs officer on duty before examination pursuant to the inspection.

(b) A passenger or crew member, required by this section to make customs entry and declaration, shall be cleared by a customs officer only if the passenger or crew member has completed the form required under 27.1005(a) above.

(c) To facilitate inspection, the prescribed form for making customs entry and declaration shall be printed in both the English and the Samoan languages.

(d) The captain of an aircraft, the master of a vessel, other crew members, the operator of the carrier or vessel, or its agent, and all individuals who willfully allow any other individuals to conceal any item brought on board with the intention to violate the laws of American Samoa, shall be punished with a fine and/or imprisonment equal to the maximum penalty provided by the law which the individual(s) intended to violate.

**History:** 2008, PL 30-36.

**27.1006 Landing certificate.**

(a) The master of any vessel may not allow to be landed, land, or receive passengers, baggage, goods, or merchandise without a certificate from the Treasurer, enumerating the persons or articles to be landed or received and indicating the place for landing and receiving.

(b) The Treasurer shall provide the Port Director a copy of the certificate.

**History:** 1963, PL 8-1; amd 1987, PL 20-29 § 8; 2008, PL 30-36.

**Amendments:** Subsection (a): added "(a)" designation; deleted "or aircraft" after "vessel"; replaced "Port Director" with "Treasurer".  
Subsection (b): added.

**27.1007 Production of documents by entering or leaving vessels.**

(a) A vessel entering or leaving American Samoa must produce on demand of the Treasurer:

- (1) clearance from last port;
- (2) registry certificate'
- (3) manifest, freight list, bills of lading, and other accounts of merchandise;
- (4) bills of health;
- (5) list of passengers;
- (6) list of crew;
- (7) shipping articles;
- (8) ship's license;
- (9) such other papers as may be required for proper entry or departure.

(b) No passengers or cargo may be landed or loaded until the papers requested have been produced and certified to be correct.

(c) The Treasurer shall provide the Port Director a copy of the certificate.

**History:** 1963, PL 8-1; 1978, PL 15-97; amd 1987, PL 20-29 § 9; 2008, PL 30-36.

**Amendment:** 1978 Subsection (a) (q) added "or departure". Subsection (b): added "or loaded".  
1987 Deleted "or aircraft" from section title and subsection (a).  
Subsection (a): replaced "Port Director" with "Treasurer". Subsection (c): added.

**27.1008 Exemptions from certificate and production of documents requirements.**

The following vessels and aircraft shall be exempt from 27.1006 and 27.1007:

- (1) vessels or aircraft of war;
- (2) public vessels or aircraft;
- (3) vessels or aircraft not permitted by the laws of the nation to which they belong to transport passengers or merchandise for hire;
- (4) vessels arriving for the purpose of taking on bunker fuel or sea stores, without landing or taking on passengers or merchandise; the master or agent shall certify under oath the amount of fuel and sea stores so taken; a vessel taking on ships stores or equipment shall be required to make entry;
- (5) vessels and aircraft arriving in distress and remaining less than 72 hours.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1009 Boarding and searching vessels.**

Any customs officer may at any time go on board any vessel at any place in American Samoa or within the customs water and examine the manifest and other documents and papers, and examine, inspect, and search the vessel and every part thereof and any person, trunk, package, or cargo on board. For this purpose, he may hail and stop such vessel and use all necessary force to compel compliance.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1010 Production of false papers-Fine.**

Any master of a vessel being examined who presents any forged, altered, or false documents or paper knowing the same to be forged, altered, or false and without revealing such fact shall, in addition to any forfeiture to which the vessel may be subject, be liable to both criminal and civil penalties.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1011 Tampering prohibited.**

(a) Any merchandise or goods of any and all description, for commercial or personal use, entering the Territory in crates, bundles, or any types of containers, may be sealed or ordered sealed by a customs officer pending inspection of the contents.

(b) Any owner, authorized representative, or consignee of cargo, goods or merchandise of any and all description entering the Territory, shall not open any crate, bundle, container, or any space which has been sealed or ordered sealed by a customs officer. This order may be given orally, in writing, or by affixing a seal or locking device on the crate, bundle, container or space in question.

(c) The customs division may authorize containers to be removed from official points of entry to other locations at the discretion of the chief customs officer prior to their inspection; however, the containers may not be opened until officially released by the customs division in writing. The breach of a customs seal without authorization by the customs division, the forcible opening of a locking device applied to a container by the customs division, or any other unauthorized tampering with cargo, goods or merchandise ordered sealed by a customs officer is a violation of these regulations.

(d) If a customs locking device has been damaged, the owner of the contents of the sealed crate, container or space, or his authorized representative, shall be held liable for the repair or replacement of the locking device. In addition said owner may forfeit any future privilege to have any sealed crate, container or space removed from the port of entry before the same is opened and inspected by a customs officer. Where a container, space or sealed crate is required to remain at the port of entry due to prior seal breaking, owner of the same must bear the cost of having the merchandise counted there unloaded and loaded. In addition to the above, any violation of this section will subject the owner of a container whose seal has been broken to a penalty of up to \$10,000."

**History:** 2008, PL 30-36.

**27.1012 Breach of law on Boarded vessel— Seizures and arrests.**

If upon examination of any vessel it appears that a breach of the laws of American Samoa is being or has been committed so as to render the vessel, or the merchandise, or any part thereof, on board of, or brought into American Samoa by such vessel, liable to forfeiture, or to secure any fine or penalty, the same shall be seized and any person who

has engaged in such breach shall be arrested.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1013 Landing and reloading of vessels in distress.**

A permit to land and reload cargo may be granted to vessels in distress when such action is necessary. Landing and reloading shall be under the supervision of the port Director and shall be subject to a reasonable charge for handling and storage.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1014 Custody of imports.**

All imports destined for American Samoa shall be landed and removed by the carrier to a warehouse or other suitable place which the Port Director shall provide, shall be taken into custody there by the Treasurer, and shall be released only on the Treasurer's order.

**History:** 1963, PL 8-1; 1987, PL 20-29 § 10; 2008, PL 30-36.

**Amendments:** Replaced "Port Director" and "his" with "Treasurer" and "the Treasurer's".

**27.1015 Vessel to vessel transfer.**

(a) A vessel may transfer, free of duty, to another vessel of the same line, bunker fuels, sea stores, ships stores or equipment, under the supervision of the Port Director.

(b) Other transfers may be authorized by the Treasurer, subject to the payment of all charges due.

**History:** 1963, PL 8-1; amd 1987, PL 20-29 § 11; 2008, PL 30-36.

**Amendments:** Replaced "Port Director" with "Treasurer".

**27.1016 Right of possession of consigned merchandise.**

All merchandise imported into American Samoa shall for the purposes of this chapter be deemed to belong to the consignee or to the holder of a bill of lading endorsed by the consignee.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1017 Furnishing of invoices to treasurer.**

The receiver of any goods imported into American Samoa shall within 72 hours after arrival give the Treasurer a list of the goods, verified under oath, showing kind, quality, purchase price and charges incident to purchase and transportation. The Treasurer may waive the list when the value of the goods for custom duty purposes is \$50 or less.

**History:** 1963, PL 8-1; 1987, PL 20-29 § 12, 2008, PL 30-36.

**Amendments:** Replaced "Port Director" with "Treasurer".

**27.1018 Customs officers service fees.**

(a) Charges shall be collected for services of customs officers from the owner, master or agency of a vessel as follows:



- (1) attendance of customs officers, per day, \$30.00;
- (2) attendance of customs officers outside of regular business hours, per hour, \$15.00;
- (3) granting clearance to commercial vessels per entry and per departure, \$6.00;
- (4) granting clearance to noncommercial vessels, per entry and per departure, \$50.00.
- (5) processing Customs Declaration of Entry forms, \$10.00 per declaration per vessel.

This charge shall not apply to passengers. The revenues from this charge shall be deposited in an account earmarked for and dedicated to the American Samoa Economic Development Authority for the repayment of its Series 2015 Bonds. Upon full repayment of said bonds, collection of this charge shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(b) The schedule of charges in paragraph (a) (1) and (a)(2) contemplates that those charges are calculated per man/per hour, or per man/per day, provided that where attendance of customs officers as paragraph (a)(1) is off Tutuila Island, the cost of travel, per diem, or other costs, including overtime, will be charged and collected from whomsoever requires such off-island attendance of customs officers.

(c) X-Ray Scanning fees as described in 27.1003 (i) are as follows:

- (1) \$200 for a 40 feet or more container;
- (2) \$200 for less than a 40 foot container (including all 20 foot containers);
- (3) \$50 for loose cargo pallet;
- (4) \$50 per vehicle or heavy equipment;
- (5) \$10 per parcel imported for commercial purposes; and
- (6) other scanning fees as determined by customs and enacted by administrative rulemaking.

(7) (A) 50% of revenues from these fees shall be deposited in an account earmarked for and dedicated to the American Samoa Economic Development Authority for the repayment of its Series 2018 Bonds. Upon full repayment of said bonds, these revenues shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(B) 50% of revenues from these fees shall be earmarked and dedicated for the maintenance of all scanner equipment.

**History:** 1963, PL 8-1; 1968, PL 10-39; 1972, PL 12-49 § 13; amd 1977, PL 15-9; 1987, PL 20-29 § 13; amd 1998, PL 25-29, 25-33; 2007, PL 30-5; 2008, PL 30-36; amd 2016, PL 34-12; amd 2016, PL 34-19 § 2; PL 36-10, amd 2020.

**Amendments:** 1977 Raised charges and added sentence at end. 1987 Subsection (a)(1): raised charge.

Subsection (a)(2): added “s” to charge.

Subsection (a)(3): changed provision to apply to commercial vessels only.

Subsection (a)(4): added.

Subsection (b): deletes certain terms and punctuation.

## **27.1019 Release of imports.**

(a) Except as otherwise provided in this section, no imports may be released from the custody of the Treasurer until all excise taxes and charges that may become due before delivery have been paid to the Treasurer, and the agent of the vessel has authorized delivery.

(b) Bulk petroleum products may be released before the payment of the excise taxes and charges if the importer is a “Petroleum Supplier” under the terms of a permit and agreement executed between the government and the petroleum terminal operator and has a valid operating agreement setting forth the time limits for payment and penalties for

delinquent payment.

**History:** 1963, PL 8-1; amd 1974, PL 13-46; amd 1987, PL 20-29 § 14; 2008, PL 30-36.

**Amendments:** 1974 Substituted references to excise taxes for references to duties throughout section. Subsection (b): added “taxable” before the word “imports”.

1987 Substituted references to “Port Director” and his authority to “Treasurer” throughout section. Subsection (a): replaced “possession” by “custody”; deleted “or aircraft” after “the vessel”.

#### **27.1020 Unclaimed baggage.**

(a) Passenger or crew member’s baggage not claimed at the customs inspection area shall be retained by the carrier and placed in a safe place within the inspection area at the airport. Unclaimed baggage which is required to be stored in another location due to inadequate storage facilities within the inspection area of the airport, may be transferred by an authorized representative of the carrier liable for the security of the unclaimed baggage; provided however, the representative of the carrier obtains approval of the customs division and the shipper accepts the condition that spoilage and/or damage to the cargo is the liability of the shipper. Cargo released to the carrier or terminal operator shall not be opened by the carrier or terminal operator. The customs division shall have the right to take into custody any part of or all unclaimed baggage when a customs officer has probable cause to believe that the baggage contains taxable, prohibited or restricted merchandise. The customs officer may open and inspect such baggage in the presence of a representative of the carrier, even if the passenger or crew member is not present.

(b) Any baggage not claimed within 90 days of the date of entry, shall be returned to the point of origin by the carrier liable for the baggage.

**History:** 2008, PL 30-36.

#### **27.1021 Unclaimed merchandise-Sale or destruction-Redemption.**

(a) Any entered or unentered merchandise which remains in customs custody for a period of 90 days from the date of importation without the payment of excise taxes, storage or other charges thereon shall be considered unclaimed and abandoned to the government and shall be sold by the customs officer at public auction.

(b) Merchandise liable to depreciation in value by damage, leakage, or other causes to such extent that the proceeds of sale thereof may be insufficient to pay the duties, storage, and other charges if permitted to remain in customs custody for a period of 90 days may be sold forthwith.

(c) Merchandise subject to sale under this section may be withdrawn at any time prior to such sale upon payment of all duties, storage and other charges and expenses that may have accrued.

(d) Any merchandise abandoned, unclaimed, or forfeited to the government under the provisions of this chapter, and which the Treasurer shall be satisfied will not sell for a sufficient amount to pay such charges, shall forthwith be destroyed, rather than sold at auction.

**History:** 1963, PL 8-1; amd 1987, PL 20-29 § 15; 2008, PL 30-36.

**Amendments:** 1987 Subsection (a): added “excise taxes” after “payment of”. Subsection (b): replaced “Port Director” with “Treasurer”.

**27.1022 Proceeds of sale-Deposit into treasury.**

(a) The surplus of proceeds of sale, after the payment of duties, storage charges, expenses and the satisfaction of any lien for freight charges, shall be deposited in the treasury of American Samoa if a claim therefor has not been filed within 30 days from date of sale.

(b) The owner of the merchandise sold shall, on due proof of his interest, be entitled to receive from the Treasurer the amount of any surplus of the proceeds of sale.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1023 Exoneration of master of vessel in which merchandise was imported.**

The sale of unclaimed merchandise shall exonerate the master of the vessel in which the merchandise was imported from all claims of the owner of the merchandise.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1024 Explosives and gasoline.**

The consignee of explosives or gasoline may be required to take possession within 24 hours or to pay the cost of removal and storage in a proper place.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1025 Liability for duties a personal debt and lien.**

The liability for duties attaching on importation constitutes a personal debt due from the importer to the government which can be discharged only by payment in full of duties legally accruing. It may be enforced notwithstanding that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customs house without such payment. It also constitutes a lien upon the merchandise imported, which may be enforced as a possessory lien while the merchandise is in the custody or subject to the control of the government, and thereafter by an action in the appropriate court.

**History:** 1963, PL 8-1; amd 1979, PL 16-53 § 9; 2008, PL 30-36.

**Amendments:** 1979 Substituted “appropriate court” for “High Court”.

**27.1026 Priorities in event of insolvency or bankruptcy of importer.**

In case of the insolvency or bankruptcy of an importer, all debts, including duties due the governments of the United States and American Samoa, shall be first satisfied, and any assignee or trustee who fails to recognize this priority shall be personally liable.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1027 Contest of valuation-Reappraisal-Adjustments.**

(a) If a person importing goods into American Samoa is of the opinion that an excessive valuation has been placed upon the goods imported and desires to protest the valuation as made, he shall so inform the chief customs officer and then submit, in writing, a request to the Governor of American Samoa that a Board of Appraisers be appointed to revalue the goods so imported and valued, setting forth in the request the

reason for his opinion that the goods have been overvalued.

(b) The Governor shall thereupon appoint a Board of Appraisers (as a rule, consisting of 3 persons, depending upon the value of the goods involved) which shall, at its earliest convenience, proceed to reappraise the goods.

(c) The verdict of the Board of Appraisers, subject to the approval of the Governor, shall be final.

(d) If the valuation placed upon the goods by the Board of Appraisers is lower than the original valuation placed upon the goods, the government shall pay such expenses as may have been incurred by reason of this. If the appraisal made by the board of appraisers is equal to or higher than that originally levied, the importer shall be required to pay such expenses as may have been incurred by reason of the appointment of the board.

**History:** 1963, PL 8-1; 2008, PL 30-36.

#### **27.1028 Refund of duties or excise taxes.**

(a) Customs duties or excise taxes paid under this chapter or 11.1001 et seq. on merchandise which is later sold to the United States Government or a private or governmental entity for export outside of American Samoa, shall be refunded on the basis of 100% for sales to the United States Government and 90% for sales for export outside of American Samoa to the vendor upon proof that the duty or tax was paid by the vendor, such sale was made, and the sales price did not include the amount of the duty or tax.

(b) For purposes of this section no refund shall be allowed in sales of less than \$25 per line item.

(c) Application for the refund shall be made within 90 days of the date of the sale.

**History:** 1963, PL 8-1; amd 1977, PL 15-50 § 1; amd 2001, PL 27-16; 2008, PL 30-36.

**Amendments:** 1977 Subsection (a): amended generally.  
2001 Subsection (a): delete the words "or the government" within the sentence.

#### **27.1029 Seized property-Liability.**

When, in any prosecution or action on account of the seizure of any vessel, vehicle, merchandise or baggage by any collector or other officer, judgment is rendered for the claimant, and it appears to the court that there was reasonable cause for seizure, the court may enter an order to that effect. The claimant is not in any such case entitled to costs, or is the person who made the seizure, or the prosecutor, liable on account of any such suit or prosecution if the vessel, vehicle, merchandise or baggage be, after judgment, forthwith returned to such claimant or his agent.

**History:** 1963, PL 8-1; 2008, PL 30-36.

#### **27.1030 Losses caused by acts of God.**

Neither the government, the customs department, nor any official or employee of the government is liable or responsible for the loss, damage or destruction of any property, goods or merchandise caused by or resulting from an act of God, including but not limited to fire, flood, earthquake or hurricane.

**History:** 1963, PL 8-1; amd 1987, PL 20-29 § 16; 2008, PL 30-36.

**Amendments:** 1987 Substitutes government and its officials and employees for the Governor.

**27.1031 Return of duty on released merchandise prohibited.**

No remission, abatement, or refund of duty may be allowed on account of the destruction of any merchandise after its release from customs.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**27.1032 Immunity of customs officers.**

No customs officer or other authorized employee is in any way liable to any owner, importer, consignee, agent or any other person for or on account of any rulings or decisions concerning, or the duties charged on, any imported merchandise, or the collection of any dues or charges, or any other matter or thing as to which the owner, importer, consignee or agent might under these regulations be entitled to protest or appeal from the decision of such customs officer or other authorized employee.

**History:** 1963, PL 8-1; 2008, PL 30-36.

**“27.1033 Importation of contraband, undeclared merchandise or false declaration—Penalties.**

(a) It shall be unlawful for any person to import, attempt to import, or attempt to cause another to bring or import into the Territory, or conceal for the purpose of importation, any of the following items, or commit any of the following acts:

- (1) Controlled substances as defined in A.S.C.A. Title 13, Chapter 10.
- (2) Currency, coin, travelers checks, money orders, and/or negotiable instruments of a total of more than \$10,000.00 (ten thousand dollars) unless the same is reported to the Customs Division in a signed customs declaration form prior to entry in the Territory.
- (3) Firearms other than rifles with a bore not exceeding .22 caliber and shotguns other than those with a gauge of 12, 16, 20, and 410 and not otherwise in violation of A.S.C.A. Title 46, Chapter 42.
- (4) Ammunition other than regular .22 caliber cartridges and shotgun shells for the shotguns described in subsection (3).
- (5) Arms as defined in A.S.C.A. 46.4220 and prohibited weapons as defined in A.S.C.A. 46.4202.
- (6) Goods, merchandise or commodities that violate international or U.S. copyright or patent laws.
- (7) Undeclared goods, merchandise, or commodities subject to excise tax.
- (8) Other illegal or unauthorized goods, merchandise or commodities, including, but not limited to, pesticides or herbicides.
- (9) File a false customs declaration. For purposes of this section, a false declaration includes one which undervalues the goods, merchandise or commodities by an amount in excess of 20% of the total amount declared or \$10,000, whichever is less.

(b) Any person who violates or attempts to violate this section shall, upon conviction, be sentenced for a class D felony, in addition to any other penalty or fine which may otherwise be imposed under this chapter or under the laws of the territory.

(c) Individuals attempting to enter contraband or merchandise into American Samoa unlawfully, either by the filing of a false declaration or by concealment, shall have such contraband or merchandise seized by customs officers and subjected to forfeiture. In order to recover goods which might have otherwise been legally imported into American

Samoa, proper excise taxes must be paid plus a 50% penalty on the value of the goods and accompanying excise taxes, and any storage and handling costs.

**History:** 2008, PL 30-36.

#### **27.1034           Exportation of contraband.**

(a) It shall be unlawful for any person to export, attempt to export, or attempt to cause another to export from the Territory, or conceal for the purpose of exportation, any of the following items:

(1) Controlled substances as defined in A.S.C.A. Title 13, Chapter 10.

(2) Currency, coin, travelers checks, money orders, and/or negotiable instruments of a total of more than \$10,000.00 (ten thousand dollars) unless the same is reported to the Customs Division in a signed customs declaration form prior to leaving the Territory.

(3) Firearms other than rifles with a bore not exceeding .22 caliber and shotguns other than those with a gauge of 12, 16, 20, and 410 and otherwise in compliance with A.S.C.A. Title 46, Chapter 42.

(4) Ammunition other than regular .22 caliber cartridges and shotgun shells for the shotguns described in subsection (3).

(5) Arms as defined in A.S.C.A. 46.4220.

(6) Goods, merchandise or commodities that violate international or U.S. copyright or patent laws.

(b) Any person who violates or attempts to violate this section shall, upon conviction, be sentenced for a class D felony, in addition to any other penalty or fine which may otherwise be imposed under this chapter.

(c) Individuals attempting to export contraband or merchandise from American Samoa unlawfully shall have such contraband or merchandise seized by customs officers and subjected to forfeiture.

**History:** 2008, PL 30-36.

#### **27.1035           Interference with customs officer's duties.**

Any person, who is being submitted to an authorized inspection by a customs officer, or any person accompanying such person, or any bystanders, shall not in any way interfere with such officer's performance of his duties.

**History:** 2008, PL 30-36.

#### **27.1036           Oaths.**

All authorized customs officers shall be empowered to administer any oaths required or authorized by these regulations in respect to any matter coming before such officers in the performance of their official duties. No compensation or fee shall be demanded or accepted for administering any oaths under the provisions of this section.

**History:** 2008, PL 30-36.

#### **27.1037           Conflict of interests.**

No person employed in the customs office may be concerned directly or indirectly with the importation of articles into American Samoa, or shall own any interest in a vessel used for such purpose, or shall act as the agent, attorney or consignee in

connection with imports.

**History:** 1963, PL 8-1; 2008, PL 30-36.

#### **27.1038 Authority to prescribe rules and forms.**

The Treasurer may make rules and prescribe forms needed to carry out the provisions of this chapter.

**History:** 1963, PL 8-1; amd 1987, PL 20-29 § 17; 2008, PL 30-36.

**Amendments:** Replaces “regulations” with “rules” and “Port Director” with “Treasurer”.

#### **27.1039 Use of U.S.C. and C.F.R. as a guide.**

In situations not covered by provisions of this chapter, those provisions of the United States Code, and the Code of Federal Regulations, which relate to customs, shall be used as a guide, insofar as practicable.

**History:** 1963, PL 8-1; 2008, PL 30-36.

#### **27.1040 Violation-Penalty.**

Except as elsewhere provided, any person convicted of violating or attempting to violate any provision in this chapter is guilty of a class A misdemeanor and upon conviction shall be sentenced accordingly; and all goods or vessels in any way connected with any breach or attempted breach of any provision in this chapter may be seized by a customs officer and in accordance with the provisions of this chapter. In addition to or lieu of the criminal penalties imposed, a fine up to the amount of \$10,000.00 may be assessed.

**History:** 1963, PL 8-1; amd 1980, PL 16-90 § 34; amd 1987, PL 20-29 § 18; 2008, PL 30-36.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice. 1987 Added language before “a person”; replaced “regulation” with “provision”, “shall be” with “is”, “Port Director” with “Treasurer”; added “shall be” after “upon conviction”.

#### **27.1041 Enforcement.**

- (a) Customs officers shall be duly sworn and shall have the authority to:
  - Seize any evidence related to any violation of any provisions of this chapter;
  - Detain any person suspected of violating any section or subsection of this chapter until a properly authorized arresting officer arrives to make the arrest.

**History:** 2008, PL 30-36.

#### **27. 1042 Due process following seizure.**

Contraband, undeclared goods, merchandise, and commodities or falsely declared goods, merchandise and commodities are subject to seizure and forfeiture in accordance with the following process:

- (a) Seizure notice: The importer or exporter is to be provided with a “Notice of Seizure” listing the items seized, the law(s) violated, the violator’s options and the customs contact location and telephone number and advising that the goods will be forfeited. Customs will also send identical seizure notices to all other known persons

with a valid interest in the property, who have the same or similar rights as the violator. A copy shall be directed to the Attorney General and, in the event of alleged criminal violations, to the Commissioner of the Department of Public Safety.

(b) Opportunity for Hearing: Should the individual whose goods have been seized desire to appeal or contest the seizure, he may do so by filing a complaint in the High Court within thirty (30) days of receipt of the Seizure Notice.

(c) Forfeiture: If no complaint is filed in accordance with (b) above, the goods will be deemed forfeited and transferred to the government. In a contested case, upon the entry of a final, non-appealable order in which the government prevails, the goods will be deemed forfeited and transferred to the government. Upon forfeiture, the government may dispose of the goods as it may see fit or in accordance with any court order. Upon the entry of a final, non-appealable order in which the individual prevails, the seized goods will be returned to the individual or otherwise dealt with as the court may direct.

(d) Expedited processing: The chief customs officer may promulgate rules for expedited processing of the above procedures if the items seized are subject to spoilage or stale dating. These rules shall specify time limitations for filing of appeals and legal petitions so that the goods may be subject to forfeiture before they are subject to spoilage or stale dating. The chief customs officer shall provide due diligence in storage of such goods to prevent premature spoilage or stale dating, and any such costs incurred in such storage shall be recovered from the violator/claimant before goods are released.

**History:** 2008, PL 30-36.

#### **27.1043          Discovery of non-payment of excise tax.**

When in the course of any lawful investigation by any governmental entity, it is revealed that goods have been received or sold by a business or individual without proper excise tax having been paid, said goods shall be subject to imposition of all due and proper tax. In addition, said goods shall also be subject to any and all accompanying civil and criminal penalties applicable to the importation and/or sale of goods without payment of appropriate taxes.

Upon determination that proper excise taxes on goods have not been paid, the customs division will have the authority to impose back taxes, penalties and interest on all goods in question.

**History:** 2008, PL 30-36.

#### **27.1044          Purchase and sale of merchandise from the Post Exchange (PX).**

(a) The Post Exchange (PX) is established solely for the use and benefit of its members. Any goods purchased from the PX are strictly for the personal use of the member making the purchase and shall not be resold or otherwise transferred unless proper excise taxes are paid.

(b) Any transfer of goods purchased from the PX, except bona fide gifts to immediate family members, without payment of proper excise taxes, is prohibited.

(c) Upon a violation of any provision of this section, any goods having been transferred without payment of proper excise taxes will be subject to seizure by the customs division. Any person convicted of transferring goods purchased at the PX in violation of this section shall be liable for payment of proper excise taxes on those goods and an additional fifty percent (50%) penalty on the value of those excise taxes. In



addition, the member may be subjected to the criminal penalties contained in section 27.1040.

(d) The Attorney General shall report abuses of PX privileges to appropriate federal authorities and seek the revocation of the violator's PX privileges.

**History:** 2008, PL 30-36.

#### **27.1045 Collection of unpaid excise tax.**

(a) If a consignee owes delinquent excise taxes or any fees or penalties, the chief customs officer may refuse to release any goods from the customs jurisdiction to the consignee until such delinquent account is settled.

(b) If a consignee makes payment by check or other instrument for payment of any excise tax, customs fee, or penalty, and that check or instrument is not honored by the bank in cash either because of insufficient funds, stop payment order or other reason, then the consignee shall be deemed to have not paid the excise tax, customs fee or penalty, and shall be immediately subject to make payment in cash or certified check for the amount due. The consignee shall also be liable for penalty and interest as follows:

(1) The maximum of \$25 or 2% of the amount due if paid within five days of notice of delinquency, or

(2) The maximum of \$25 or 5% of the amount due if paid within fifteen days of notice of delinquency, or

(3) The maximum of \$25 or 10% of the amount due if paid within thirty days of notice of delinquency, or

(4) The maximum of \$25 or 10% of the amount due plus simple interest calculated at 8% per annum based on the amount due including penalty from the date of the check.

(c) A customs officer may seize and/or reseal any container that has left the customs jurisdiction but upon which the excise tax was not properly paid.

**History:** 2008, PL 30-36.

## **Chapters 11—14**

**(RESERVED)**

## **Chapter 15**

### **COMMERCIAL CODE**

#### **Sections:**

- 27.1501 Limit on sale price of goods.**
- 27.1510 Validity of mortgage, bill of sale, etc.**
- 27.1511 Filing of instrument of satisfaction.**
- 27.1530 Contracts-Sufficiency of writing.**
- 27.1531 Contracts-Formal requirements.**
- 27.1532 Contracts-Enforceability.**

#### **27.1501 Limit on sale price of goods.**

No merchant, trader, storekeeper or other person may sell goods to a Samoan on credit for

more than the current cash selling price of like goods at the place where the credit transaction took place, but this section shall not prohibit a Samoan from agreeing in writing to pay interest of not more than 8% per year on overdue accounts growing out of credit transactions.

**History:** 1962, PL 7-23; 1968, PL 10-66; amd 1975, PL 14-16 § 3.

**Research Guide:** For a definition of Samoan, see subsection (g) of 27.0601.

### **27.1510      Validity of mortgage, bill of sale, etc.**

No mortgage, agreement that creates or provides for a security interest, bill of sale, conditional sales contract, deed of trust or conveyance of personal property which is not accompanied by a permanent delivery thereof to the vendee is valid as to persons who do not have actual knowledge thereof unless all of the following conditions are met:

- (1) it is in writing signed by the person to be bound and attested to by at least one witness;
- (2) it is filed with the Territorial Registrar within 10 days after its execution;
- (3) it truly states the consideration upon which it was based or the debt or liability which it was intended to secure, and contains a description of the land sold or mortgaged, or the security for the debt or liability that reasonably identifies the security, whether specific or not. The security may be described by its listing, category, type, quantity and/or location and may include property so described which is acquired after execution of the mortgage or agreement creating or providing for the security interest.

**History:** 1962, PL 7-31; 1968, PL 10-68; amd 2006, PL 29-19.

#### **Case Notes:**

Statute which states that no instrument shall be effective to create a security interest unless it contains a description of items to be mortgaged prevents the creation of a “general mortgage” and reinforces the statutory prohibition against mortgages on after-acquired real property and fixtures, as well as security interests in personal property. A.S.C.A. 27.1510©, 37.1003. *Shantilal Brothers, Ltd. V. KMST Wholesale*, 15 A.S.R.2d 115 (1990).

American Samoa’s chattel mortgage statute requires not just that the mortgage contain some language sufficient to put third parties on inquiry, but that it contain a “description” of the “specific” article or articles mortgaged. A.S.C.A. § 27.1510. *Shantilal Brothers, Ltd. V. KMST Wholesale, Inc.*, 16 A.S.R.2d (1990).

Purposes of territorial statute requiring recordation of non-possessory liens are (1) to protect those who might otherwise extend credit to others in the mistaken belief that the borrowers’ possessions are likely to be available as security for any unpaid debts; and (2) to foil fraudulent assertions by judgment debtors that property in their possession actually does not belong to them but has been purchased by or hypothecated to friends or relatives. A.S.C.A. § 27.1510. *Development Bank v. Reed*, 5 A.S.R.2d 135 (1987).

### **27.1511      Filing of instrument of satisfaction.**

When the obligation secured by any of the instruments mentioned in 27.1510 has been satisfied, the owner or holder of the instrument shall satisfy the same in the records of the Territorial Registrar by filing an instrument of satisfaction or by endorsing upon the margin of the record a statement, signed by him, releasing his interest in the property affected.

**History:** 1962, PL 7-31; 1968, PL 10-68.

### **27.1530      Contracts-Sufficiency of writing.**

Except as otherwise provided in this section and 27.1531 and 27.1532, a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this section beyond the quantity of goods shown in such writing.

**History:** 1979, PL 16-4 § 1.

**27.1531 Contracts-Formal requirements.**

Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of 27.1530 against that party unless written notice of objection to its contents is given within 10 days after it is received.

**History:** 1979, PL 16-4 § 1.

**27.1532 Contracts-Enforceability.**

A contract which does not satisfy the requirements of 27.1530 but which is valid in other respects is enforceable:

(1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer has made either a substantial beginning of their manufacture or commitments for their procurement;

(2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods for which payment has been made and accepted or which have been received and accepted.

**History:** 1979, PL 16-4 § 1.

**Chapters 16-24**

**(RESERVED)**

**Chapter 25**

**NEGOTIABLE INSTRUMENTS**

**Sections:**

**27.2501 Legal tender.**

**27.2502 Government checks negotiable at par.**

**27.2503 Adoption of Uniform Negotiable Instruments Law.**

**27.2501 Legal tender.**

The currency of the United States of America, at its face value, shall be the only legal tender in American Samoa for the payment of public and private debts and obligations.

**History:** 1962, PL 7-23.

**27.2502 Government checks negotiable at par.**

(a) All checks drawn upon the Treasurer by the government are negotiable at par.

(b) Any person within the limits of American Samoa who charges a fee for cashing a check of the government shall be fined not more than \$100.

**History:** 1962, PL 7-23.

**27.2503 Adoption of Uniform Negotiable Instruments Law.**

The Uniform Negotiable Instruments Law as proposed by the National Conference of Commissioners on Uniform State Laws and as construed by a majority of the courts in the United States, rather than the common law of England, shall govern those commercial transactions to which it is applicable.

**History:** 1962, PL 7-23; 1968, PL 10-66.

## **Chapter 26**

### **FOREIGN INVESTMENT**

**Sections:**

- 27.2601 Policy and legislative findings.**
- 27.2602 Definitions.**
- 27.2603 Compliance with this chapter.**
- 27.2604 Duties and powers of the Director.**
- 27.2605 Application for certificate of foreign investment.**
- 27.2606 Criteria for applications review.**
- 27.2607 Approval letter-Financing required.**
- 27.2608 Certificate of foreign investment-Issuance.**
- 27.2609 Terms of the certificate of foreign investment.**
- 27.2610 Suspension, revocation or modification of certificates of foreign investment.**
- 27.2611 Fees.**
- 27.2612 Enforcement.**

**27.2601 Policy and legislative findings.**

(a) The Legislature finds that:

(1) There is interest among foreign persons to make large investments on a long-term basis in American Samoa.

(2) The Territory desires such investment but needs to regulate foreign investment to attract appropriate investment and to protect native resources.

(3) In order to attract appropriate long-term investment, there is a need to provide access to the Territory for foreign investors and their families.

(4) Such investors need to have access to the Territory to manage and supervise their investments, but such access must be controlled.

(b) The Legislature intends by this act to establish a clear statutory framework for the regulation of foreign investment. Foreign investment is to be generally encouraged, on a selective basis, to strengthen and diversify the Territory's economic base. Direct competition with existing locally owned small businesses is not desired, but new industries and high labor using industries are desired. Foreign investors are to be given all reasonable opportunities and assistance in bringing commercially desirable and environmentally safe activities into the Territory. Furthermore, it is the policy of the Territory to use foreign investment to supplement, not displace, the needs and desires of the people of the Territory. All foreign investment is to be consistent with, and not destructive in any way, of existing social, cultural, economic and natural resources management goals. Newly developed goals may be introduced at any time, but

enterprises already operating shall not be unfairly hindered or restricted by retroactive application of goals.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2601.1 Definitions.**

As used in this title, unless the context requires otherwise, the following meanings apply:

(a) "Certificate of foreign investment" means the certificate issued by the Director of Development Planning which includes information required by section 27.2609.

(b) "Enterprise" means any kind of for profit business accepted and, pursuant to this act, of appropriate size, location, character or duration which derives not less than 60% (sixty percent) of its gross receipts from foreign sources.

(c) "Foreign Investment" means capital in any form to be invested by foreign investors in American Samoa in an amount of not less than \$1,000,000 (one million U.S. dollars) per investor in their individual enterprise or \$250,000 (two hundred fifty thousand U.S. dollars) per investor by a group of investors in an enterprise of not less than \$5,000,000 (five million U.S. dollars).

(d) "Foreign investor" means a natural person:

(1) Seeking or holding a certificate of foreign investment or a foreign investment visa; or

(2) Without United States citizenship or nationality, or permanent residency in American Samoa, who wishes to participate in a foreign investment in American Samoa.

(e) "Director" means the Director of Development Planning.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2602 Compliance with this chapter.**

(a) No person may make any foreign investment in American Samoa directly or indirectly unless the provisions of this chapter have been complied with.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2604 Duties and powers of the Director.**

(a) The Director shall be provided with appropriations in an annual budget sufficient to handle effectively all of his duties.

(b) The Director is authorized to hire staff necessary to effectively execute all of his duties. Such staff shall be career service and must have appropriate educational, administrative and work related experience.

(c) The Director shall have the following affirmative duties related to foreign investment:

(1) to develop, publish and implement written guidelines and programs of foreign investment in American Samoa consistent with the policy of the act;

(2) to publish annually and make available to any interested person a comprehensive list of industries or classes of industries in which foreign investment is to be promoted, prohibited, or left to the discretion of the foreign investors;

(3) to accept and to thoroughly review all applications to determine whether the proposed enterprise meets the investment criteria in section 27.2606;

(4) to conduct public hearings on all proposals as necessary to evaluate public opinion and gather information and to have regular consultations with the applicants during review of the application;

(5) to issue approval letters to applicants upon mandatory review of the criteria in section 27.2606; otherwise to not issue such letters;

(6) to give 180 days to holders of approval letters to secure financing to implement the proposal;

(7) upon receiving satisfactory proof of secured financing, to issue a certificate of foreign investment in the name of the applicant and to forward it to the Governor for review; otherwise to not issue such certificates;

(8) to submit an annual report on January 31<sup>st</sup> of each year to the Governor and Legislature on all foreign investment activities during the previous calendar year, showing a list of all approval letters and certificates of foreign investment issued, pending or in effect, and those suspended, modified or revoked, and other relevant information;

(9) to actively coordinate the meaningful review by and input of other governmental agencies the functions, services and burdens of which may be affected by a proposed foreign investment, but no agency which desires to contribute relevant information to the review of a proposal may be excluded.

(d) The Director has the following discretionary powers to carry out his above duties:

(1) to adopt and promulgate rules pursuant to the Administrative Procedures Act, section 4.1001 et seq., not inconsistent with the provisions of this chapter;

(2) subpoena records, books, witnesses, document and any other data, administer oaths, inspect real or personal property related to an application for a certificate of foreign investment, and conduct inquiries necessary to perform his duties;

(3) monitor the operations of foreign investments in American Samoa, and if necessary and after reasonable advance notice to a certificate holder, modify, suspend or revoke a certificate of foreign investment.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

## **27.2605 Application for certificate of foreign investment.**

(a) Any foreign investor, indigenous resident, or United States organizer may apply for a certificate of foreign investment by submitting an application to the Director. The application must include the following information:

(1) the applicant's:

(A) name, age, place of residence, nationality and birth;

(B) business history;

(C) medical history;

(D) record of any felony arrests or convictions;

(E) spouse, dependents and all other business partners in the proposed enterprise.

(2) a detailed description of the proposed enterprise which includes:

(A) the form of business and the amount of the foreign investment;

(B) the exact nature of the operations of the enterprise;

(C) the expected number of local residents to be employed;

(D) the expected duration of the enterprise;

(E) the demands on local utilities and public services and ability to provide self-generated utilities or acceptable waste disposal service;

(F) the planned training program for local resident employees, if any;

(G) the amount of capital, in whatever form, to be invested by the applicant which is the personal property of the applicant, and the amount of equity ownership available to American Samoa residents;

(H) the amount of financing needed to begin operations of the enterprise and the sources of the financing;

- (I) the number of non-local residents expected to be employed by the enterprise;
- (J) information on the likely ecological impact on the Territory;
- (K) other information the applicant desires to include to demonstrate a positive impact on the criteria listed in section 27.2606.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2606 Criteria for applications review.**

(a) In reviewing an application for a certificate of foreign investment, the Director must review and make written findings of the criteria in subsection (b), and specifically whether the proposed enterprise will have a positive, negative or neutral impact on the Territory. A finding of a negative impact on any single criteria does not preclude the issuance of a certification of foreign investment nor does a numerical majority of positive impact findings guarantee the issuance of a certificate of foreign investment. The Director shall take an accommodate, overall approach in reaching his decision on each application. The Director shall actively consult with the applicant regarding his concerns on any of the criteria. All records shall be kept for at least 3 years.

(b) The Director must consider, exclusively, the following criteria:

- (1) the need for and desirability of the enterprise to operate in the Territory;
- (2) the ability of the enterprise to export goods or services from the Territory or, to provide goods or services in the Territory which previously had been imported;
- (3) the likelihood that the enterprise would be and remain in compliance with all local and applicable federal laws and rules;
- (4) the number and type of newly created employment positions for qualified American Samoa residents and the extent to which non-residents will be used in the enterprise operations;
- (5) the impact of the enterprise on the ecology of the water, land, air, and living conditions in American Samoa;
- (6) the extent to which the enterprise will compete directly or indirectly against existing local businesses, considering the likelihood of whether the technology or processes of the enterprise can be developed locally;
- (7) outlines for construction, including locations, architectural plans, materials and grade, and compliance with zoning laws and uses in effect in the Territory at the time of the application;
- (8) the extent to which the enterprise would include American Samoa residents in joint ventures or equity ownership in the enterprise;
- (9) the extent to which the enterprise can, or plans to, use local contractors, subcontractors, labor, materials and other suppliers in its establishment, construction and operations;
- (10) the effect upon all local utilities and waste disposal facilities and the capacity of the enterprise to satisfy its own utility and waste disposal needs;
- (11) the quality, duration and expended results of a resident employee training program specifically directed toward the skills needed by enterprise;
- (12) to the extent determinable, the anticipated length of time the enterprise is expected to operate in American Samoa and the resulting long-term consequences;
- (13) the personal integrity, business history and business reputation of the foreign investor applicants and any local applicants for the same enterprise;
- (14) the likelihood that the enterprise has been organized in bad faith or that the certificate of foreign investment may be misused.

(c) The Director may request of any applicant reasonable documentary proof of any facts alleged in the proposal or provided by communications from the applicant. Refusal to supply

requested material may be grounds for negative findings under this section and, ultimately, denial of an application.

(d) If the Director is unable reasonably to determine that impact of any single criteria, without fault of the applicant, it shall be so reported.

(e) After reviewing all the criteria, the Director shall give a written conclusion of whether he approves of the proposed investment based on the total impact of the enterprise's operation.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2607 Approval letter-Financing required.**

(a) Upon determining, after review of the criteria in section 27.2606, that a proposed enterprise is one which the Director approves of, he shall issue to an applicant a letter of approval. The letter of approval must be issued or denied within 120 days of receiving the application. If an application is denied, the applicant shall be given written reasons for the denial. Reapplications are allowed.

(b) The letter of approval provides no special rights to the applicant nor does it quarantine final issuance of a certificate of foreign investment.

(c) After receiving the letter of approval, the applicant has 180 days to secure and prove access to financing sufficient to construct and begin the operations of the enterprise. Proof of adequate financing must include proof of resources sufficient to initiate the approved enterprise within 120 days of the issuance of the certificate of foreign investment. Failure to secure, and prove to the Director, the necessary financing within 180 days of the issuance automatically voids the letter of approval. There shall be no extensions of time to obtain financing.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2608 Certificate of foreign investment-Issuance.**

(a) Upon receipt of documentation required by section 27.2607 the Director must either issue or deny a certificate of foreign investment, within 30 days of receiving such documentation.

(b) If the Director denies issuance of the certificate of foreign investment to an applicant he shall state the reasons in writing and forward the denial statement to the applicant immediately.

(c) Notice of issuance of the certificate of foreign investment is forwarded to the Governor for final approval. The Governor may approve or deny the issuance of the certificate and must give specific written reasons in the case of a denial. The Governor may act to approve or deny the issuance within 20 days of receipt of the Director's notice or the issuance will be deemed approved.

(d) Final approval by the Governor means the certificate holder may commence immediately the construction for operation of the enterprise. The certificate is deemed to be the legal equivalent of a business license under section 27.0202 et seq., and no further license is required, except that articles of incorporation or partnership must be filed with the Registrar upon final approval of the certificate of foreign investment.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2609 Terms of the certificate of foreign investment.**

(a) Every certificate of foreign investment shall contain the following data:

(1) a description of the enterprise and the form of business which will operate it and the location;

(2) name, nationality, age, and current residence of the applicant;



- (3) description of additional financial resources required to continue or expand the enterprise beyond the initial starting capital and the date by which such financing must be obtained;
  - (4) any terms or conditions established by the Director on the foreign investment, including limitations on sites, construction, waste disposal; and
  - (5) other information deemed necessary by the Director.
- (b) The certificate of foreign investment is perpetual in duration and transferable but only with the approval of the Director.
- (c) The holder of such certificates must submit an annual report to the Director by January 3<sup>rd</sup> of each year on activities of the previous calendar year. The report must contain sufficient information to allow the Director to determine whether the certificate holder and the enterprise are in compliance with the terms of issuance. Failure to submit reports on time is grounds for suspension of the enterprise's operation until the report is submitted.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

**27.2610        Suspension, revocation or modification of certificate of foreign investment.**

- (a) At all times during the life of a certificate of foreign investment, its holder and the enterprise must be in compliance with the provisions of this chapter and all other applicable laws and regulations. Failure to comply may lead the Director, after giving the certificate holder reasonable notice and opportunity to cure such failures, to suspend or modify the certificate of foreign investment.
- (b) The Director may revoke permanently a certificate of foreign investment upon clear evidence that the foreign investor:
- (1) has not maintained an approval investment in continuing compliance with the terms of issuance of a certificate of foreign investment;
  - (2) has committed fraud or misrepresentation in any material assertion in the application for the certificate of foreign investment or in the annual report required under section 27.2609;
  - (3) has been subjected to an adjudication of bankruptcy under chapter 7 of the U.S. bankruptcy laws regarding the foreign investment;
  - (4) has failed to comply with any conditions or obligations stated in the certificate of foreign investment, after having been afforded by the Director a reasonable period within which to correct such failure; provided, however, that should the foreign investment fail for reasons beyond the control of the foreign investor, the Director shall provide a reasonable time to the foreign investor within which to refinance the approved investment, or secure participation in alternative approved investment;
  - (5) has been subjected to a finding by the Attorney General that the corporate parent for the enterprise, if any, has been dissolved; or
  - (6) has violated any material provision of this chapter and the rules promulgated under section 27.2604 (b).
- (c) Should the Director decide to revoke a certificate of foreign investment, the foreign investor shall be afforded a six month grace period following revocation of his certificate in order to take the steps necessary to liquidate, transfer or otherwise dispose of assets connected with the investor's enterprise. The Director shall advise the Attorney General in writing of the decision to revoke the certificate of foreign investment, and compute the six month's grace period date commencing from the date of revocation.
- (d) In the event the investment can not be liquidated after proper due diligence within the six month grace period, the government may purchase said investment for its then appraised current value, less 20%, as set by a fully licensed and accredited appraiser. In the event that the

government declines to purchase the investment at the indicated time or value, the investor will place his holdings for public sale. The investor is expected to accept any reasonable valid offer and until said time, safely maintain all properties, and pay any appropriate taxes which may come to be in effect in American Samoa.

(e) The foreign investor's foreign investment entry permit and the entry permit held by members of his immediate family shall be valid up to and including the final day of the six-month grace period following revocation of the certificate of foreign investment.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2611.1 Fees.**

(a) The fees for applying for a certificate of foreign investment is two thousand five hundred dollars (\$2,500) and is non-refundable. This fee covers all costs of the Director in accepting, reviewing and processing the applications.

(b) Additional fees for other costs may be imposed by the Director through adoption of rules under section 27.2604.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.

#### **27.2611.2 Enforcement.**

(a) To the extent necessary to obtain compliance with any provision of this act of any rule promulgated hereunder, the Attorney General shall assist the Director in enforcing the same.

**History:** 1988, PL 20-80; amd 1991, PL 22-11.